

The ESDP crisis management operations of the European Union and human rights

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Impressum

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A member of Free Aceh Movement shows rifles
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Mission (AMM) for destruction, at Blang Padang
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Study

The ESDP Crisis Management Operations of the European Union and Human Rights

Jana Arloth
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Deutsches Institut
für Menschenrechte



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Preface

The promotion and protection of human rights is one of the primordial objectives of the foreign policy of the European Union – and thus of the European Security and Defence Policy (ESDP). It is a guiding principle for military operations of the European Union; and with the strengthening of civil-military co-operation and the development of purely civil instruments for crisis management human rights protection should and will rise in importance for crisis management operations of the European Union.

The present study examines the role human rights protection plays today in ESDP operations. It comes to the conclusion that from a normative perspective, a solid set of human rights rules and guidelines for ESDP have been developed. In practice, though, the integration of

human rights components or human rights advisors as well as gender advisors in the ESDP missions has only just begun. The authors consider the strengthening of the civil component and the integration of a human rights perspective into the planning, as well as of human rights protection into the implementation fundamental steps for a lasting, sustainable impact of EU missions in conflict regions. The study concludes with a set of recommendations for strengthening human rights as an element of the ESDP.

Dr. Heiner Bielefeldt
Director
German Institute for Human Rights



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Introduction

"We will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights." KOFI ANNAN¹

Crisis management operations have, as the most recent European Union (EU) mission in the DR Congo, *EUFOR RD Congo*, illustrates, emerged as one of the key instruments of the international community for mastering a development associated with so-called fragile or failed states. Fragile statehood, which has afflicted the international system increasingly since the ending of the east-west confrontation, is perceived as a security risk that reaches beyond the borders of the state in question.² This risk, the dangers associated with it and the will to "contribute to the protection of civilians under imminent threat of physical violence" increasingly provoke international organisations and regional actors like the UN and the EU to react with measures such as civilian or military operations.³

Multi-dimensional peace operations are nowadays not only conducted by the UN, but also involve regional actors such as the OSCE, NATO or the EU, which as a union of 27 states with approximately 500 million people has become a key player in world affairs. Only a few years ago it seemed extremely unlikely that the European Union would carry out such operations. Meanwhile, though, as well as applying a large range

of tools such as trade, development, sanctions, humanitarian aid or diplomacy to prevent or mitigate crisis situations, the Union has been involved in 16 different field operations. These operations come under the European Security and Defence Policy (ESDP),⁴ which constitutes a vital part of the Union's Common Foreign and Security Policy (CFSP) that came into force in 1993 with the Maastricht Treaty.

The ESDP became a reality on the ground in 2003, when two civilian and two military operations were launched to facilitate the stabilisation of two regions in crisis, South-East Europe and the Democratic Republic of Congo. Today, the European Union has launched 16 operations altogether, most of which are ongoing. The missions have developed enormously over the past five years, changing in shape and growing in importance. This study examines the human rights dimensions of ESDP missions. As acknowledged by the Council of the EU,⁵ every crisis includes human rights violations, and consequently human rights protection has to be part of every solution. Article 11 of the Treaty on European Union (TEU) affirms the EU's commitment to human rights as a guiding objective for its foreign and security policy. Recent developments such as the adoption by the Council of guidelines on human rights and gender mainstreaming in ESDP crisis management have underlined this commitment even more strongly.

All missions have been inevitably confronted with human rights issues, such as the question of dealing with child soldiers, the discovery of mass graves in a war-torn region or the issue of the appropriate use of force and rules of behaviour. This study endeavours to ex-

¹ Kofi Annan: Address to the Summit of the African Union, Sirte, 4 July 2005.

² See Schneekener (2005a), 26–29.

³ Quote from: United Nations Security Council Resolution S/RES/1671 (2006), mandating *EUFOR DR Congo*, adopted by the Security Council at its 5421st meeting on 25 April 2006, Introduction.

⁴ As enshrined in Art. 17.2 of the Treaty on European Union (TEU).

⁵ See Council of the European Union 11678/1/05 REV1, Aceh Monitoring Mission – Human Rights Aspects. Brussels, 21 February 2006 (CEU 11678/1/05 REV1).



plore to what extent human rights issues have thus far been integrated into EU crisis management operations and draws some conclusions for the further implementation of human rights standards in ESDP missions. It does not, however, examine the reasons behind the EU's decision to launch an operation in a given country, which could be a question of the legitimacy, the timeliness or the adequacy of an operation as an answer to a crisis.

After an introduction to the ESDP and its crisis management capabilities, the study gives an overview of the main bodies involved in decision making and at the operational level within European Security and Defence Policy. It then examines human rights obligations relevant for the ESDP. Subsequently, human rights tasks which can be carried out in crisis management operations are described followed by an account of the human rights components within the military and civilian ESDP operations. The focus is on the principal implicit or explicit human rights function of each mission, introduced by a brief overview of the various types of missions undertaken by the EU. In the final chapter opportunities for strengthening human rights in the ESDP are sketched out.

As regards the methodology, this study is mainly based on a number of expert interviews and an analysis of Council documents, press releases and academic literature.

1

The ESDP Crisis Management Operations of the EU – Human Rights Included?

1.1 The Development of the European Security and Defence Policy (ESDP)

Established as the second pillar of the EU in 1993 in the Treaty on European Union (TEU) (Maastricht) and defined in Article 11.1, the Common Foreign and Security Policy (CFSP) on EU aims at safeguarding common values of the Union, strengthening the security of the Union and international security and developing key values such as democracy, the rule of law and human rights. The CFSP underwent important changes in the Amsterdam Treaty and the provisions effective today were revised again by the Treaty of Nice, which entered into force on 1 February 2003. The main features of the CFSP are outlined in Art. 17.1 and 2 of the TEU and read now in the amended version:

1. The common foreign and security policy shall include all questions relating to the security of the Union, including the progressive framing of a common defence policy, which might lead to a common defence, should the European Council so decide. [...]
2. Questions referred to in this Article shall include humanitarian and rescue tasks, peacekeeping tasks and tasks of combat forces in crisis management, including peacemaking.

Art. 17.2 describes the kind of missions assigned to the EU, the so-called Petersberg tasks.⁶ The three types of missions envisaged in Petersberg cover a range of possible measures, from humanitarian aid and rescue tasks to peacebuilding and ultimately to robust military peacemaking operations within the field of crisis man-

agement. Apart from conflict prevention, these tasks cover the fields of military and civil crisis management, both under the heading of ESDP.

A common defence policy was created by the TEU (Maastricht) in Title V Art. J.4 with the more cautious formulation stating that CFSP "shall include all questions related to the security of the Union, including the *eventual framing* of a common defence policy ..." (italics added).

The ESDP as the operative part of the CFSP was shaped in a series of Council meetings from 1999 on. In 1999 – the enormous speed with which decisions were taken is to be understood against the backdrop of the Balkan conflict and the striking inability of the Europeans to take decisive action – the project of developing an independent ESDP as a distinct part of the EU's CFSP was launched by the Cologne European Council.⁷ This meeting placed the development of civilian and military capabilities for international conflict prevention and crisis management at the core of the process of strengthening the ESDP in order to meet the ESDP's overall objective: the strengthening of the EU's capacity for external action. At the Nice summit in 2000 many important features were finally adopted or created, such as the post of the High Representative for the CFSP (who is also the Secretary-General of the Council of the European Union; HR/SG), the Political and Security Committee, the European Military Committee and the European Military Staff. Since then operational activity has continued to expand. When the European Council at Laeken in December 2001 adopted a declaration on the operational capability of the ESDP,

⁶ The tasks derived from a June 1992 Declaration of the Western European Union at Petersberg, Germany, and were incorporated in 1999 into Title V of the TEU.

⁷ See Cologne European Council, 150/99 REV 1, Presidency Conclusions, Annex III, European Council Declaration on Strengthening the Common European Policy on Security and Defence, 3 / 4 June 1999.



it officially recognised that the Union is now capable of conducting a wide range of civilian and military crisis management operations "with tasks ranging from peacekeeping and monitoring implementation of a peace process to advice and assistance in military, police, border monitoring and rule of law sectors".⁸

"Establishing the rule of law and protecting human rights" in connection with other civil instruments "are the best means of strengthening the international order" according to the European Security Strategy "A Secure Europe in a Better World" (ESS), adopted on 12 December 2003. In this strategy the EU's commitment to human rights was developed further, while the EU also took a major step towards strategic development in the security field. Terrorism, state failure, weapons of mass destruction, regional conflicts and transnational organised crime are listed as major threats to the Union. State collapse and regional conflicts are conducive to other threats. Thus priority is given to a secure environment at the borders of the Union. Underlining the importance of rapid reaction to potential threats and challenges, the ESS, under the heading of growing activity, capability and coherence, puts military intervention in the context of other instruments for crisis prevention and management such as political, diplomatic, trade and development activities. Special attention is given to the civil components and the role of development aid in post-conflict situations, and to crisis prevention. The strategy underlines the need for coherence and co-operation between military and civil components and the support and use of an effective multilateral system. It formulates a clear commitment to positioning the EU as a reliable partner for UN peace operations.

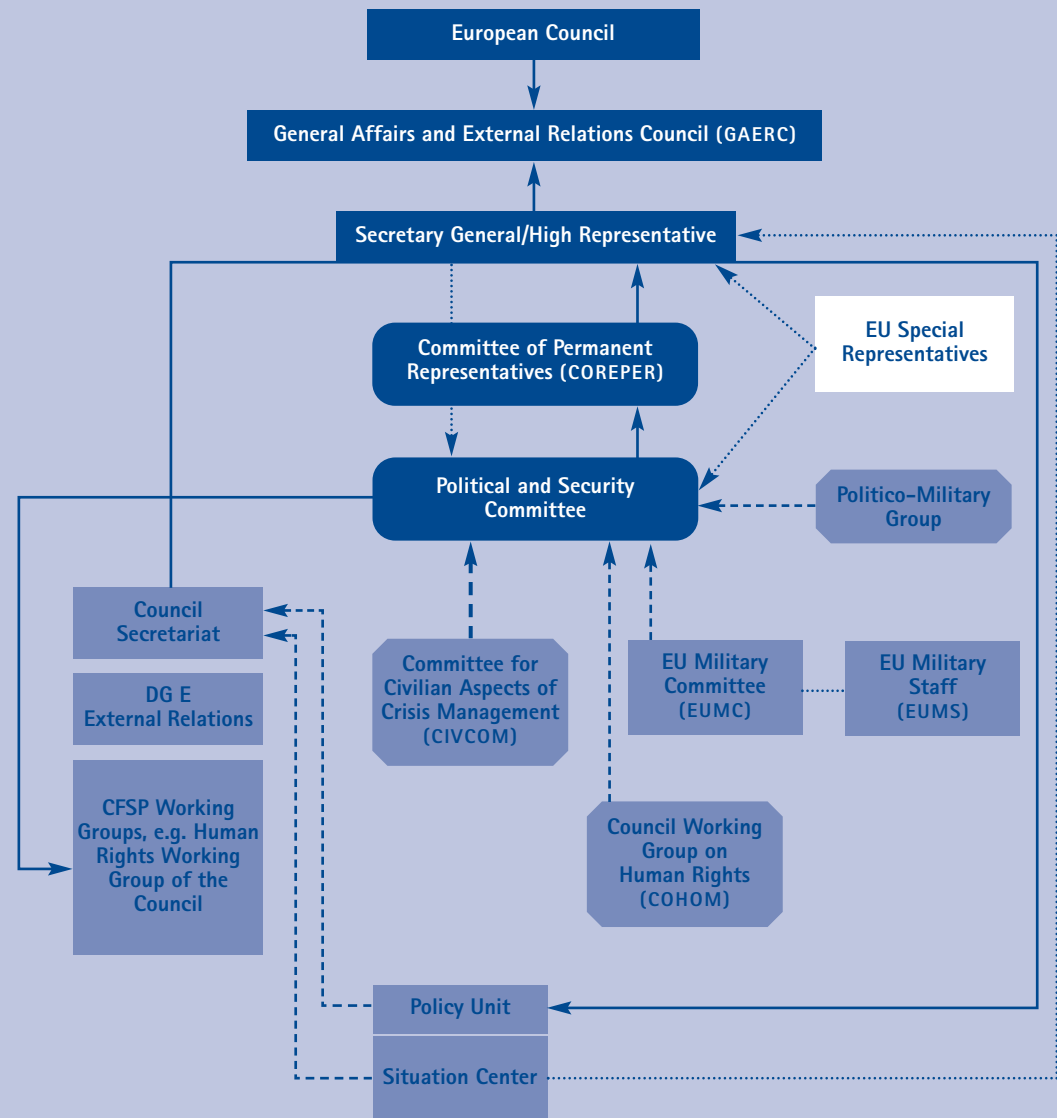
1.2 Structures and Procedures of the ESDP and the Incorporation of Human Rights

Despite these policy declarations, on an operational level coherence between military and civil planning and decision-making structures seems to be an ongoing challenge. In practice there is considerable overlap between Commission programmes and the civilian crisis management bodies in the Council Secretariat which can lead to gaps or even competition.⁹ The Commission, while in a position to submit proposals on the ESDP to the Council and involved in the implementation of relevant decisions, has the competence (and long-standing experience) to address civilian aspects of long-term and structural conflict prevention and post-conflict institution-building. Decisions on these actions, which include activities in the fields of civil administration, civil protection, police and rule of law, are taken within the Commission while decisions on the deployment of EU military operations and rule of law and police missions follow the intergovernmental approach of the Council. But the Commission activities in civilian crisis management are connected as closely as possible to ESDP civil missions (such as rule of law and police). Planning, decision-making and implementation of operations within the ESDP are undertaken by a series of different bodies of the Council of the EU. These bodies all act under the authority of the European Council and the General Affairs and External Relations Council (GAERC). All 27 member states as well as the Commission and the Council Secretariat are represented in Council Working Groups, the Political and Security Committee, Committee of Permanent Representatives and the General Affairs and External Relations Council; all these bodies are chaired by the Presidency. However, the relationships between these structures are not a straightforward hierarchy. Figure 1 (see page 12) shows the actual working relationships between the various bodies.

⁸ Council of the EU 15891/05, Presidency Report on ESDP. Brussels, 19 December 2005 (CEU 15891/05).

⁹ See Jakobsen (2004), 7.

FIGURE 1:
CFSP / ESDP Institutions of the EU (based on: International Crisis Group (2005):
EU Crisis Response Capability Revisited, Crisis Group Europe Report N°160, January 2005, 17)



LEGEND:

- Presides Over/Directs
- Reports To
- Advises
- Policy-making body
- Advisory Body



At the Council, the main structures are the following:

- The **European Council**, composed of heads of state and governments, agrees by unanimity on common strategies that set the objectives, duration and means for EU crisis management.
- The **General Affairs and External Relations Council (GAERC) / Council of Ministers** consists of a meeting of EU foreign ministers or EU defence ministers. At its sessions on external relations, GAERC deals with all the Union's external activities, including common foreign and security policy. It authorises decisions prepared at ambassadorial level in the Political and Security Committee as well as the Committee of Permanent Representatives (COREPER) (see below) through, for instance, Council conclusions, joint actions and common positions. The agenda for GAERC meetings is prepared by the COREPER.
- Appointed by the Council, the **EU Special Representatives** for specific regions contribute, essentially using diplomatic tools, to conflict prevention and mediation. Working closely with the heads of mission in the case of the deployment of an operation in their respective area, they are mandated to promote respect for human rights and report to the Council on their activities in this field.¹⁰

Two bodies are composed of member state representatives at ambassadorial level.

- The **Committee of Permanent Representatives (COREPER)** is an inter-pillar group and composed of ambassadors from EU member states while chaired by the presidency of the Council. It has a pivotal role in decision making. COREPER deals with institutional, legal and budgetary aspects of CFSP/ESDP and in this capacity it prepares the Joint Actions which launch ESDP crisis management operations.
- The **Political and Security Committee (PSC)** is composed of national representatives at ambassadorial level and attended by Commission and Council Secretariat officials. It is the central structure in CFSP and ESDP. In close contact with the SG/HR the PSC has the key role in preparing decision-making by the political bodies such as the European Council and the GAERC. The PSC contributes to the ongoing development of the ESDP and, most significantly, leads operations in cooperation with the European Military Staff.

It prepares options for missions in cooperation with the military staff and coordinates contributions to the mission by countries within and outside the EU. The PSC sends guidelines to the EUMC (see below) and receives its recommendations as well as advice from the Council working groups CIVCOM and PMG.

An important body works under the directives of the PSC:

- The **EU Military Committee (EUMC)** is the highest military body within the Council. Member states' chiefs of defence are represented by their military delegates. The committee provides military advice and gives recommendations to the PSC and to the HR/SG; and is supported by the EUMS, to which it provides military direction during crisis management operations. The EUMC also monitors the progress and implementation of military operations.

Member states are represented in all Council Working Groups:

- The **Politico-Military Group (PMG)** is a working group of the PSC. It examines the politico-military aspects of all proposals within the framework of the CFSP, and works on horizontal issues pertaining to civil and military areas before they are referred to the PSC.
- The **Committee of Civilian Aspects of Crisis Management (CIVCOM)** as a Council working group is a consultative body composed of national representatives plus officials from the Commission and the Council Secretariat. It receives guidance from the PSC, for which it also formulates recommendations and gives advice on civilian aspects of crisis management, although it formally reports to COREPER. The PSC plans and monitors the progress of civilian missions.
- Another working group of the Council is **COHOM, the Council Working Group on Human Rights**, established in 1987. Its mandate was extended in 2003 to include first pillar issues so as to have under purview all human rights aspects of the external relations of the EU. Whereas COHOM does not usually discuss missions, it tries to ensure that human rights aspects in general and the human rights guidelines in particular are taken into account in civilian and

¹⁰ The SR for Afghanistan has a human rights expert in his team.

military crisis management operations. It could potentially play an even bigger role in ensuring human rights mainstreaming into ESDP operations. As to ESDP operations, it is important to note that at the expert level the human rights desk of the Council Secretariat and some human rights departments in member states are playing an important role in the mainstreaming of human rights and gender into the ESDP, including with regard to planning and reviewing operations.

- The **Council Secretariat** supports the Council of the EU and prepares and ensures the smooth functioning of the Council's work at all levels and thus has considerable influence over policy development. Within the Secretariat a Planning and Mission Support Capability has been established which is responsible for lessons learnt/best practices after operations and mission support.¹¹ The Council Secretariat is headed by the Secretary-General/High Representative (SG/HR).

Internal Structures of the Council Secretariat:

- The **Secretary-General/High Representative for the CFSP (SG/HR)** of the Council assists the Council in foreign policy matters, through contributing to the formulation, preparation and implementation of European policy decisions. Moreover he has an essential function in mediation and facilitation of conflict resolution through diplomatic action. The SG/HR has a Personal Representative on Human Rights.
- The **Personal Representative of the SG/HR on Human Rights** in the area of CFSP, a post created as recently as in December 2004 by the Council, has an important role to play in promoting mainstreaming of human rights aspects into the CFSP and the ESDP.¹² She has access to the sessions of the PSC and to the Cabinet of the SG/HR.¹³
- The **Secretariat has nine Directorates-General (DG)**. One of these deals with External Relations and is divided into nine directorates for geographic and functional areas. To mention the most important in terms of ESDP and Human Rights, DG IV deals with Transatlantic Relations, UN and Human Rights, DG VII with the European Security and Defence Policy, DG VIII with Defence Aspects, and DG IX with Civilian Crisis Management and Coordination.

- The **Policy Planning and Early Warning Unit (Policy Unit)** is part of the Council Secretariat and prepares policy option papers for the HR/SG that provide him with daily policy guidance and serve as the basis for decisions by the PSC (see below). The Unit, which consists of staff seconded from member states, is thus under the direct authority of the HR/SG.

- The **Situation Centre (SITCEN)**, which is part of the Secretariat and also directly attached to the HR/SG, consists of civilian and military components; staff are seconded from member states. It monitors the international situation, drawing on intelligence provided by member states as well as open-source information, and provides the Council's competent bodies with situation assessments. It serves both military and civil decision making. The SITCEN as well as the Policy Unit and the other bodies can rely on human rights expertise within the Council Secretariat, on head of mission reports and on EU human rights fact sheets pertaining to the human rights situation in almost every country in the world. SITCEN also functions as communication centre for the SG/HR and the EU Special Representatives.

- The **EU Military Staff (EUMS)** is composed of a considerable number of military experts seconded from member states, civilian support staff and others, and provides early warning capability, situation assessment and strategic planning. The EUMS identifies EU national and international capabilities and provides the link between the EUMC and the military resources of member states. Efforts are being made to include human rights experts in the EUMS, EUMC and the other structures in Brussels responsible for planning and conducting the ESDP operations.

- The **Civil-military Cell** which comprises military and civilian personnel was established within the EUMS in order to enhance the EUMS's capacities and liaise between the EU's civil and military structures on all issues related to crisis management.

It should be added that as regards the **European Parliament (EP)**, under the terms of the current treaties the EP has a limited role and restricted constitutional rights in the framework of CFSP/ESDP: The EP should be regularly informed of the development of the foreign and security policy of the EU by the Presidency and the

¹¹ See International Crisis Group (2005a), 16.

¹² Human resources to support this position as well as the COHOM are rather limited, regrettably.

¹³ The position is held by the Estonian diplomat Dr Riina Ruth Kionka.

Commission and it has right to present reports, resolutions and recommendations. Through these and presence in the field, the EP carries out monitoring in crisis situations. Yet there is a problem of parliamentary control over the ESDP operations, with debates going on about the question how to improve the EP's scrutiny in this area.¹⁴

1.3 EU Human Rights Instruments of Relevance for the ESDP

1.3.1 Treaty Obligations

The Treaty on European Union (TEU) states in Art. 6 that

1. The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.
2. The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.

Regarding the standards referred to in Art. 6, the European Court of Justice (EuCJ) in Luxembourg draws inspiration not only from the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the constitutional traditions of the member states but also on the guidelines supplied by international instruments for the protection of human rights to which member states are signatories¹⁵, the International Covenant of Civil and Political Rights (ICCPR, 1966),¹⁶ and the European Union Charter of Fundamental Rights.¹⁷

Since the Treaty of Rome established the European Communities in 1957, human rights have been one of the defining principles of European integration. Since

the early 1990s, the EU has been integrating human rights clauses into the association and cooperation agreements concluded under the 1st pillar. With the Maastricht Treaty of 1992 human rights became an objective of the Union's CFSP. Title V of the TEU (Provisions on a common foreign and security policy, Art. 11.1) stipulates five fundamental objectives, the last of which reads: "to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms". This commitment also covers the ESDP, due to the fact that it is part of the CFSP. Furthermore it includes a two-fold commitment: on the one hand, it states a policy objective the Union has to aim at in all external action, and on the other hand, it declares that the Union is itself in its acts bound to human rights.¹⁸ Consequently, all EU bodies (including the Council) are bound by these norms, and the same is true for member states not only through their own human rights obligations but also in cases where they act implementing a Council mandate.

A serious problem that may arise within any peace mission is a human rights violation committed by a staff member of the mission. Does the local population have, in such a case, access to an effective remedy? This touches upon the question of the extraterritorial validity and applicability of human rights conventions ratified by member states participating in the mission. In its General Comment 31 the Human Rights Committee defines the scope of the International Covenant of Civil and Political Rights, "within its territory and subject to its jurisdiction" (Art. 2, para. 1) as also relating to persons "to those within the power or effective control" of the forces of a State Party.¹⁹

Art. 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms grants the rights and freedoms enshrined in the Convention to all persons within the jurisdiction of the High Contracting Parties. The European Court of Human Rights, based in Strasbourg, examining the validity and applicability of the convention in the Banković case,²⁰ concluded that jurisdiction is essentially a territorial notion. The

¹⁴ See e.g. Speech on Police, Rule of Law, Monitoring and Security Sector Reform missions under ESDP by Karl von Wogau, 9 October 2006.

¹⁵ EuCJ: Judgement of 27 June 2006, Case C-540/03, para. 35.

¹⁶ Ibid., para. 37.

¹⁷ Ibid., para. 38.

¹⁸ Baldus confirms this in his comment on the right to freedom and security as a fundamental right: "Dass die militärischen Organe der Europäischen Union bei der Teilnahme an bewaffneten Konflikten in vollem Umfang an die Grundrechte gebunden sind, kann nicht zweifelhaft sein, da nach dem EU-Vertrag die gesamte Gemeinsame Außen- und Sicherheitspolitik unter dem Ziel der Achtung der Menschenrechte und Grundfreiheiten steht". Baldus 2006, 457.

¹⁹ Human Rights Committee, General Comment No. 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, para. 10, CCPR/C/21/Rev.1/Add. 13, 26 May 2004.

²⁰ Banković and Others vs. Belgium and 16 other Contracting States, Appl. No. 52207/99, European Court of Human Rights, 12 December 2001.

judgement was strongly contested.²¹ As academic controversies on the notion of “within its jurisdiction” continue and further cases relating to extraterritorial applicability of the Convention are pending before the Strasbourg Court,²² the discussion on an adequate legal response on human rights violations by peace missions remains open.

A detailed framework agreement, a memorandum of understanding or some other international law source must be agreed upon as the point of reference for the operation's justification.²³ This is also critical in order to minimise concerns about external actors challenging local authority, since military and police operations, especially, go to the heart of a host state's sovereignty.²⁴

The mission will further act under the human rights provisions of a peace agreement (if this exists) and the obligations of the sending states.²⁵ In the first place, though, the human rights obligations under which a peace operation of the EU is performed will depend on legal obligations of the host state, i.e. the constitution and the human rights treaties ratified by the host state.

1.3.2 Human Rights and Gender Mainstreaming Guidelines

In order to generally promote human rights outside the Community the EC/EU has, since the early 1960s, developed a wide range of instruments in the sphere of diplomacy, development, trade and humanitarian aid. These include, *inter alia*, declarations and demarches, common strategies, common positions, joint actions, human rights clauses in agreements with third states (1995) and provisions on political dialogue and conflict resolution (notably the Cotonou Agreement). Since 2000 the EU has also been focusing on election monitoring, with 34 missions completed. The EU is, together with its member states, the biggest donor of develop-

ment and humanitarian aid worldwide.²⁶ Human rights promotion forms an important part of these activities.

As a consequence of the EU's commitment to human rights, the Council has adopted a number of human rights guidelines: the guidelines on the death penalty (1998), on torture and other cruel, inhuman or degrading treatment (2001), on human rights dialogues with third countries (2001), on children in armed conflict (2003) and on the protection of human rights defenders (2004). These guidelines apply to the ESDP as well, as it is part of the CFSP. According to the 2005 EU Annual Report on Human Rights, civilian and military crisis management operations play an important role in the implementation of these guidelines, in particular those relating to children and armed conflict.²⁷ The latter are explicitly related to the ESDP, since their adoption took place shortly after the first ESDP mission to the DR Congo (operation *Artemis*). Because of their relevance for the ESDP, they will be considered in greater detail here, along with the EU follow up to UN Security Council Resolution 1325 on peace, women and security,²⁸ the Council Document on Mainstreaming Human Rights across the CFSP, and other EU policies.

The EU guidelines on children and armed conflict, adopted by the General Affairs Council on 8 December 2003, address the short-, medium- and long-term impact of armed conflict on children.²⁹ Referring to the Convention on the Rights of the Child, which, although almost universally ratified, is by no means universally applied, the EU guidelines aim to raise awareness both within the EU and among third parties of the devastating impact of armed conflict on children. They encourage non-EU countries and non-state actors to implement international law, to take effective measures to protect children from the effects of armed conflict and to put an end to the recruitment of children into armies and armed groups.

²¹ An interesting and critical discussion of the Strasbourg Case Law is provided by Michal Gondak, 2005.

²² E.g. *Behrami vs. France*, Appl. No. 71412/01, and *Saramati vs. France, Germany and Norway*, Appl. No. 78166/01, both European Court of Human Rights.

²³ See Oakley et al (1998), 401.

²⁴ See Hansen (2002), 80.

²⁵ Ratification of the ECHR is a precondition for EU membership.

²⁶ €100 million per year have been spent on the promotion of democracy and human rights through the EIDHR (European Initiative for Democracy and Human Rights). See EIDHR website http://ec.europa.eu/europeaid/projects/eidhr/eidhr_en.htm#eidhr2. Over the next seven years (2007–13) the initiative will have a total of 1,100 million at its disposal. See website of the European Parliament at http://www.europarl.europa.eu/news/public/story_page/015-1079-338-12-49-902-20061207ST001078-2006-04-12-2006/default_en.htm.

²⁷ See EU Annual Report on Human Rights (2005), 19.

²⁸ Council of the EU, 11932/2/05 Rev 2, Implementation of UNSCR 1325 in the context of ESDP. Brussels, 29 September 2005 (CEU 11932/2/05, Rev 2).

²⁹ Council of the EU, 15634/03, EU Guidelines on Children and Armed Conflict. Brussels, 4 December 2003 (CEU 15634/03).

The guidelines explicitly refer to crisis management operations by emphasising that the EU will pay special attention to the protection of children in armed conflict when taking action aimed at maintaining peace and security. According to the guidelines, heads of missions and military commanders (through the chain of command) should include in their periodic reports an analysis of the effects of conflict on children. In particular, "violations and abuses against children, recruitment and deployment of children by armies and armed groups, killing and maiming of children, attacks against schools and hospitals, blockage of humanitarian access, sexual and gender-based violence against children, abduction of children and the measures taken to combat them by the parties in case" should be addressed. The guidelines also state that the issue of protection of children should be adequately tackled during the planning process of an operation and in training activities for missions. As a follow up to the guidelines and in order to ensure that child right concerns are systematically addressed throughout the entire process of an ESDP operation the Council of the EU adopted a on 23 May 2006 a Checklist for the Integration of the Protection of Children affected by Armed Conflict.³⁰ While mission mandates should address key child protection concerns, relevant child protection issues should also be incorporated into the terms of reference for assessment and lessons learnt processes. Furthermore, during the conduct of the missions collaboration with relevant international, national and local partners should be sought.

In recent years, gender in armed conflict zones has been one of the important topics addressed by the UN.³¹ UN Security Council Resolution 1325 (2000), the most comprehensive UN resolution on the position of women in peacebuilding activities, recognises the urgent need to mainstream gender perspectives into peace operations in order to ensure the effectiveness of the missions. Striving to increase the involvement of women at all levels of field operations and decision-making related to conflict prevention and resolution, as

well as in areas such as disarmament, demobilisation and reintegration (DDR), it promotes women as advocates for peace and seeks to expand the contribution of women to field operations. It also acknowledges the necessity to respect the different needs of men and women and to take special measures with regard to the protection of women and girls in conflict zones.

In respect of a gender perspective in EU policies, Art. 3(2) of the EC Treaty provides a legal basis for gender mainstreaming. It states that "the Community shall aim to eliminate inequalities, and to promote equality, between men and women in all its activities", while Art. 2 states that "the promotion of equality between men and women is a task of the European Community". Gender mainstreaming is defined in the 1995 Commission communication as involving "not restricting efforts to promote equality to the implementation of specific measures to help women, but mobilising all general policies and measures specifically for the purpose of achieving equality by actively and openly taking into account at the planning stage their possible effects on the respective situation of men and women (gender perspective). This means systematically examining measures and policies and taking into account such possible effects when defining and implementing them".³² In terms of CFSP and ESDP, the Council confirms that "gender equality is a fundamental principle of the EU's foreign and security policy" and "that efforts should be made to integrate gender related issues in ESDP policy making".³³ In 2005 the EU Ministers responsible for Gender Equality reaffirmed their commitment to implementing policies and programmes following UN Security Council Resolution 1325,³⁴ while in the Council Conclusion of May 2005 the GAERC encouraged its bodies to carry out further work in fields related to the implementation of the UN Resolution.³⁵ In September 2006, reflecting later developments, the Council drafted a strategy on the implementation of UN Security Council Resolution 1325 on peace, women and security,³⁶ which proposes measures to implement the Resolution within the ESDP.³⁷

³⁰ Council of the EU, 9767/06, Checklist for the Integration of the Protection of Children affected by Armed Conflict. Brussels, 23 May 2006 (CEU9767/06).

³¹ Back in May 2000 the UN Department of Peacekeeping Operations and the Namibian Government organized a seminar on mainstreaming a gender perspective in peace support operations. The results were the Windhoek Declaration and the Namibia Plan of Action. Both call for gender mainstreaming in peace operations.

³² Integration of Gender in the European Initiative for Democracy and Human Rights (EIDHR) 2001-2002, Memorandum, EUROPEAID F3, online: http://ec.europa.eu/europeaid/projects/eidhr/pdf/gender_eidhr-2002.pdf.

³³ CEU 11932/2/05 Rev 2, 3.

³⁴ See Ministerial Declaration of the Conference of Ministers of Gender Equality. Luxembourg, 4 February 2005, online at: http://www.eu2005.lu/en/actualites/documents_travail/2005/02/04pekindeclmin/index.html.

³⁵ See Council of the EU, Council Conclusion on ESDP. Brussels, 23 May 2005, 4 (18).

³⁶ CEU 11932/2/05 Rev 2.

³⁷ The European Parliament adopted a resolution on "The participation of women in peaceful conflict resolution" in 2000 (2000/2025(INI), A5-0308/2000, 20 October 2000) and in 2006 a report on "Women in armed conflict and their role in the reconstruction and democratic process in post-conflict countries" (2005/2215 (INI), A6-0159/2006, 3 May 2006).

The Council adopted Conclusions on Promoting Gender Equality and Gender Mainstreaming in Crisis Management in November 2006.³⁸ These Conclusions have to some extent been approved as a reaction to the findings of a case study on gender mainstreaming in ESDP operations carried out by the EU Institute for Security Studies at the request of the EU.³⁹ The study, which makes specific reference to the missions in Bosnia and Herzegovina (*EUPM* and *Althea*), was undertaken to look at gender aspects in the ESDP missions. According to the authors the international security presence failed to effectively address the gender dimension of post-conflict stabilisation of Bosnian society. There was no gender perspective included in the Dayton Peace negotiations, nor in the mandates of the operations. Among mission staff there is little knowledge of what purpose gender mainstreaming serves.⁴⁰ The stereotypical notion that the deployment of women soldiers may be inappropriate in the context of "traditional" societies is common. Furthermore, gender balancing is not (yet) an issue in the police reform in Bosnia and Herzegovina, although the deployment of local female police officers who can handle the female victims of domestic violence and trafficking would be important. With regard to human trafficking and prostitution it is problematic that the rules for mission staff, which strictly prohibit either, may apply only to the mission area, which shifts the problem across the borders. There has been no systematic cooperation between the EU and national women's groups. Another persistent problem concerns sexual harassment of female (and male) soldiers and the fact that many women do not know who to report to if they are harassed. Overall the study recommends implementing gender mainstreaming as an instrument to improve the operational effectiveness of crisis management operations and enhance human rights.

In the Council Conclusions on the implementation of EU policy on human rights and democratisation in third countries adopted in December 2006, the Council again reiterated its commitment to promoting gender equality and gender mainstreaming in crisis management. According to these Conclusions, which underline the need to take practical measures to strengthen the human rights perspective in the ESDP, efforts are to be undertaken to develop a standard field manual on human rights for ESDP missions.⁴¹

Another important tool is the Council Document on Mainstreaming Human Rights across CFSP and other EU policies,⁴² which was adopted in June 2006 and is in line with Art.11 of the TEU. This article states that the EU is committed to mainstreaming human rights and democratisation into EU policies in order to achieve a more coherent and effective EU human rights policy. With regard to ESDP missions and operations the mainstreaming document maintains in I.7:

"The protection of human rights should be systematically addressed in all phases of ESDP operations, both during the planning and implementation phase, including by measures ensuring that the necessary human rights expertise is available to operations at headquarter level and in theatre; training of staff; and by including human rights reporting in the operational duties of ESDP missions."

Furthermore the Council Secretariat and Presidency shall:

(29) "integrate human rights provisions in guiding documents and reviews of ESDP missions and operations where relevant, inter alia by making use of the human rights fact sheet and seeking advice of relevant UN agencies and NGOs";

(30) "implement human rights policy in context of ESDP missions and operations where relevant, in particular as regards women and children, including by monitoring and reporting on human rights related issues;

³⁸ Council of the EU, Council Conclusions on promoting gender equality and gender mainstreaming in crisis management, 2760th General Affairs Council Meeting. Brussels, 13 November 2006.

³⁹ Judy Batt and Johanna Valenius: Gender Mainstreaming: Implementing UNSCR 1325 in ESDP Missions. EU Institute for Security Studies, 3 July, 2006.

⁴⁰ Batt and Valenius use the following definition of gender mainstreaming: Gender mainstreaming is "the process of assessing the implications for women and men of any planned action, including legislation, policies or programmes, in all areas and at all levels. It is a strategy for making women's as well as men's concerns and experiences an integral dimension of the design, implementation, monitoring and evaluation of policies and programmes in all political, economic and societal spheres so that women and men benefit equally and inequality is not perpetuated" (UN ECOSOC, 1997). Batt and Valenius (2006), 5.

⁴¹ Council of the European Union, 16719/06, Council Conclusions on the implementation of the EU Policy on human rights and democratisation in third countries. Brussels 13 December 2006 (CEU 16719/06).

⁴² Council of the EU, 10076/06, Mainstreaming human rights across CFSP and other EU policies. Brussels, 7 June 2006 (CEU 10076/06).

(31) "include human rights experts in ESDP missions and operations where appropriate."

Member states, the Commission and the Council Secretariat should:

(32) "provide human rights training to personnel serving in ESDP missions and operations;"

(33) "integrate human rights aspects as part of flanking measures or technical assistance provided in the context of ESDP missions and operations where appropriate."

Effective distribution of information on human rights issues to all relevant actors is to be ensured, as well as an annual review of the progress achieved towards the implementation of the document.⁴³

Finally, the guidelines on the promotion of international humanitarian law need to be mentioned.⁴⁴ As stated in the conclusions on the implementation of the EU Human Rights policy (2005), they are another instrument to promote human rights in the framework of CFSP.⁴⁵ The objective of these guidelines is to set out operational tools for the EU and its institutions to promote compliance with international humanitarian law,⁴⁶ as set out in the Hague and Geneva Conventions (and their Additional Protocols).⁴⁷ All EU member states are parties to the Geneva Convention and their Additional Protocols and thus under the obligation to abide by their rules,⁴⁸ and the EU itself has also declared its commitment to the application of humanitarian law to peace-keeping operations.⁴⁹ According to Council Document 13310/01, "humanitarian law, which could be classified as universal *sui generis* law, serves in association with 'human rights' as an essential, efficient and effective le-

gal instrument for managing the legal aspects of crisis situations".⁵⁰

1.3.3 Standards of Behaviour for Mission Personnel

In line with these commitments of the Union there are legal obligations of personnel deployed in ESDP operations. Staff must apply the provisions of international law, including, when applicable, the law of armed conflict, and the laws of the contributing state. As a rule personnel is also obliged to respect local law unless the execution of the mission requires otherwise.⁵¹ The sanitised version of the Operation Plan for the military operation *Concordia* in Macedonia,⁵² for instance, states that "all use of force in the former Yugoslav Republic of Macedonia (FYROM) by EU-led forces will be governed by the principles of necessity and proportionality. While the bases of the EU's mission in the FYROM include UN determinations, EU led forces will respect local law". The clarification of the laws applying in the region in question from the beginning of the intervention is thus an indispensable precondition; and if local law (previous or current) reflects human rights principles better it must obviously be applied.⁵³ Therefore there is the need for mission personnel to receive information on local cultural traditions and inherent norms. In addition, though, operation staff must fully respect international human rights and criminal justice standards at all times.⁵⁴ They must, furthermore, co-operate fully with any human rights mechanisms. Unfortunately, as UN operations have shown, this has not always been the case. There have been numerous instances of misconduct committed by international staff

⁴³ Considerable activities for human rights mainstreaming have been initiated by three consecutive Presidencies and the Personal Representative for Human Rights to update all geographical working groups in the Council on the human rights guidelines.

⁴⁴ Council of the EU, 15246/05, Guidelines on the Promotion of International Humanitarian Law (IHL). Brussels, 5 December 2005 (CEU15246/05).

⁴⁵ See CEU 16719/06.

⁴⁶ International Humanitarian Law (IHL) is intended to alleviate the effects of armed conflict by protecting those persons who are not taking part in conflict and by regulating the means and methods of warfare. IHL is applicable in times of armed conflict and occupation. On the contrary, human rights law is applicable to everyone within the jurisdiction of the State concerned in times of peace and in times of armed conflict. See EU Guidelines on Promoting Compliance with IHL, C 327/4 Official Journal of the EU, 23 December 2005 (EU 2005/C 327/04).

⁴⁷ These date respectively from 1899, 1907, 1949 and 1977.

⁴⁸ See EU 2005/C 327/04, 1.

⁴⁹ See CEU 13310/01.

⁵⁰ CEU 13310/01.

⁵¹ See CEU 8373/3/05 REV 3 or Council of the EU 7855/03, Sanitised Version of the FYROM Operation Plan, *Concordia*. Brussels, 28 March 2003 (CEU 7855/03).

⁵² Council of the EU 7855/03, Sanitised Version of the FYROM Operation Plan. Brussels 28 March 2003 (CEU 7855/03).

⁵³ See CEU 13310/01.

⁵⁴ The set of standards and rules mission staff are obliged to respect is very complex. To ensure practicability, the individual soldier is equipped with a pocket card summarizing all main instructions from the use of force down to standards of behaviour. For an example see page 39.

in peace operations.⁵⁵ If this happens, it can have a devastating effect on the entire mission. The most severe consequence would be the loss of credibility, trust, respect and confidence among the population.⁵⁶

The local population, on the other hand, are the principal victims of internal conflict, and in order to protect them it is crucial to promote rules for the appropriate use of force and codes of conduct for combatants. Appropriate use of force is regulated in the so-called rules of engagement (ROE), which are usually based on a Status of Forces Agreement (SOFA). While SOFAs define the legal status of military operation personnel in the territory of the host state, and clarify the terms under which they are allowed to operate, ROEs determine at what time, place and in what way force may be used. In spite of their crucial relevance for the application of human rights and humanitarian law in armed conflict they will not be discussed here as they are not public.⁵⁷ Apart from the use of force, other potential areas of misconduct are behaviour towards the local population and criminal acts. Standards of behaviour for EU personnel were drafted following accusations in Bosnia.⁵⁸ On 18 November 2003, the PSC took note that CIVCOM had agreed on "Draft Guidelines on Protection of Civilians in EU-led Crisis Management Operations",⁵⁹ and the PSC approved the "Generic Standards of Behaviour for ESDP Operations" on 19 May 2005.⁶⁰ The generic standards should be seen as complementary to the guidelines on protection of civilians. Both are living documents which are reviewed and adjusted as a consequence of lessons learnt.

The "Draft Guidelines on Protection of Civilians in EU-led Crisis Management Operations" were developed "to ensure that special protection, rights and assistance needs of civilians are fully addressed in all EU-led crisis management operations". Beside various other aspects, the need for special measures to protect women and children, especially girls, from sexual exploitation, abuse and trafficking is highlighted. The strict observation

and monitoring of compliance with the UN's "Ten Rules: Code of Personal Conduct for Blue Helmets", as well as the Six Core Principles established by the UN Inter-Agency Standing Committee in its "Plan of Action on Protection from Sexual Exploitation and Abuse in Humanitarian Crises" is recommended. The guidelines further provide that "with a view to promoting the important role of women in conflict prevention and resolution [...], in addition to the mainstreaming of a child rights perspective [...], measures will be taken to mainstream a gender perspective taking into account all relevant UN Security Council resolutions". Such measures could include the incorporation of gender analysis into early warning activities, the inclusion of gender expertise in fact-finding missions, planning and implementation processes and field operations, and the integration of gender perspectives into all standard operating procedures and other guidance materials for crisis management operations.

The "Generic Standards of Behaviour for ESDP Operations" complement these guidelines and the legal obligations of personnel in accordance with international law and the law of the contributing state. They have, according to the document, to be tailored to each operation specifically, and cover all relevant standards to ensure the appropriate behaviour of personnel with regard to each other and to the local population. The Standards stipulate that it is critical "that all people, be it local population or personnel, are treated with dignity and respect, regardless of sex, age, ethnic origin, religion, sexual orientation, disability, social or economic status or political views". They specifically refer to gender issues by stating that the "exchange of money, employment, goods or services for sex, including sexual favours or other forms of humiliating, degrading or exploitative behaviour, is prohibited".

Furthermore, for each operation special arrangements concerning disciplinary matters and the status of the mission and its staff are developed in relevant planning

⁵⁵ For instance, in East Timor and Bosnia there were incidents of trafficking in women and rape, and in Cambodia officers habitually frequented brothels. See Mobekk (2005), 22–23.

⁵⁶ See Hansen (2002), 50.

⁵⁷ Neither Operation Plans nor rules of engagement are public documents. Only a very limited number of so-called OPlans are partly accessible on request. Access to OPlans is refused because they contain operational details of particular sensitive nature, the disclosure of which could jeopardize public security on the ground, relations with the parties involved and the Council's decision-making process. Letter of the General Secretariat to the authors, 12 July 2006.

⁵⁸ See Human Rights Watch (2002).

⁵⁹ Council of the EU, 14805/03, Draft Guidelines on Protection of Civilians in EU-led Crisis Management Operations. Brussels, 14/11/2003 (CEU 14805/03).

⁶⁰ See Council of the EU, 8373/3/05 REV 3, Generic Standards of Behaviour for ESDP Operations. Brussels, 18 May 2005 (CEU, 8373/3/05 REV 3).

documents,⁶¹ which are concluded between the EU, the host state and the sending state.⁶² In addition to the Joint Actions/Mandates for each operation, an Operation Plan is developed which is also extremely relevant on the subject of clear-cut rules of behaviour of personnel.⁶³ The Aceh Monitoring Mission *AMM*, for instance, also had a special "Code of Conduct" for its monitors.⁶⁴ Concerning the implementation of the standards it is, as maintained by the Generic Standards, the responsibility of the heads of mission (HoM) or operation commanders (OCOMs) and senior management to ensure that these values are fully explained to the personnel and applied consistently.⁶⁵ They are usually also responsible for monitoring the implementation of the standards. Furthermore, according to the former HoM of *EUPOL Proxima* (Macedonia), there are reporting obligations a mission has to fulfil. The ambassadors of the member states also report to the respective foreign ministers whose representatives sit on those supervisory bodies in Brussels. They receive reports on the situation on the ground and the work of the mission on a bi-weekly basis.⁶⁶

What, however, are the procedures, when misconduct occurs? Misconduct, such as human rights abuse, is regarded as an extremely serious concern and should be treated as such according to all documents, mentioned above. In practice, in the realities of the situation the entire issue constitutes a matter of a sensitive and, consequently, intransparent nature. There is no information available on cases of human rights violations in EU operations (if there have been any at all). What can be stated, however, is that there have been instances of neglect of duty or malfeasance in EU operations. This has been confirmed for two missions, *Proxima* and *AMM*.⁶⁷

In a case of misconduct or any violation of the above-mentioned standards, disciplinary measures are to be conducted. These measures are independent of possible criminal procedures.

Regarding the latter, military and civilian personnel are subject to the exclusive criminal jurisdiction of their sending state under the current standard agreements. Obviously, this exclusivity can result in problematic jurisdictional gaps particularly for cases of abuse against local civilians and violence against women. The status of the mission and its staff – military or civilian – is governed by arrangements with the authorities of the host country.⁶⁸ As regards military operations, Joint Action 2003/423/CFSP on the EU military operation in the DR Congo (*Artemis*), states that during the operation, members of the sending party benefit from the provisions of Article VI of the 1946 Convention regarding experts on UN missions, in particular concerning immunity from personal arrest or detention and immunity from legal process in respect of any act done by them while they perform their duties.

Commonly the personnel of civilian missions are "granted all privileges and immunities equivalent to that of diplomatic agents granted under the Vienna Convention on Diplomatic Relations of 18 April 1961, subject to which the EU Member States shall have priority of jurisdiction".⁶⁹ The SG/HR can waive the immunity enjoyed by personnel "where such immunity would impede the course of justice",⁷⁰ but only with the explicit consent of the authority of the sending state. The Council Decision on the conclusion of an agreement between the EU and the Government of Indonesia on the status of *AMM* and its personnel in Aceh furthermore provided that the *AMM* staff shall not be liable

⁶¹ See Generic Standards of behaviour, CEU 8373/3/05 REV 3.

⁶² See e.g. Council Joint Action 2005/826/CFSP of 18 July 2005 on the establishment of an EU Police Advisory Team (EUPAT) in the Former Yugoslav Republic of Macedonia (FYROM) (CJA 2005/826/CFSP) or Council Joint Action 2004/847/CFSP of 9 December 2004 on the European Union Police Mission in Kinshasa (DRC) regarding the Integrated Police Unit (EUPOL 'Kinshasa') (CJA 2004/847/CFSP).

⁶³ See e-mail interview with Jürgen Scholz, 24 April 2006.

⁶⁴ The *AMM*'s code of conduct based on the standards of behaviour was contained in the *AMM* Standard Operating Procedures (SOPs) that, according to the former Spokesperson for *AMM*, each monitor reads and signs to confirm that they have been understood. See *AMM*, 2006.

⁶⁵ The Council General Secretariat is to ensure that OCOM and HoM are suitably advised.

⁶⁶ See e-mail interview with Jürgen Scholz, former Head of Mission of *Proxima*, 24 April 2006.

⁶⁷ See e-mail interview with Jürgen Scholz on 24 April 2006 and e-mail interview with the former spokesman of the *AMM* mission (9 June 2006). One case of sexual misconduct on the part of an *AMM* monitor was handled promptly and appropriately when the person in question was dismissed, and the *AMM* apologized for his/her behaviour to the Acehnese people. See ICG (2006b), 9.

⁶⁸ See e.g. *EUPAT*: CJA 2005/826/CFSP or *EUPOL Kinshasa*: CJA 2004/847/CFSP.

⁶⁹ Council of the EU, 15705/1/03 Rev 1, Agreement between the EU and the former Yugoslav Republic of Macedonia on the status and activities of the European Union Police Mission EUPOL PROXIMA in the former Yugoslav Republic of Macedonia. Brussels, 5 December 2003, Art. 6 (CEU 15705/1/03 Rev 1).

⁷⁰ CEU 15705/1/03 Rev 1; Council of the EU, 13972/04, Council Decision concerning the Conclusion of the Agreement between the European Union and Georgia on the status and activities of the EU Rule of Law Mission in Georgia EUJUST Themis. Brussels, 17 November 2004 (CEU 13972/04).

to any form of arrest or detention, and that no measures of execution may be taken, except in the case where a civil proceeding not related to their official functions is instituted against them.⁷¹ The *AMM* personnel thus had immunity from the jurisdiction of the Republic of Indonesia. But it was subject to the jurisdictions of their respective Sending States.

The rules and procedures for disciplinary measures for misconduct, on the other hand, differ for civilian and military personnel, but for each operation special arrangements concerning discipline are developed in the relevant planning documents.⁷²

In the case of a military operation, Joint Action 2003/423/CFSP of 5 June 2003 on the EU military operation in the DR Congo (*Artemis*) provides that members of the sending state remain members of the armed forces of the sending party, remain under its command and are subject to their own service laws and regulations during the operation. In the case of misconduct by a mission staff, the OCom is responsible for disciplinary measures. If a case is reported to the authorities of the host state, they shall inform the OCom and the person in question shall be handed over to the OCom. He will then take disciplinary measures and, if necessary, effect repatriation. The authorities of the host state shall be informed about the measures taken.⁷³

For civilian missions the HoM is usually responsible for disciplinary control over staff. With regard to civilian personnel seconded by member states, third states or EU institutions, full disciplinary jurisdiction is retained by relevant national authorities or authorities within

the EU institutions.⁷⁴ The decision on which disciplinary measures will be applied is also made by the HoM. The ultimate disciplinary sanction is dismissal and return to the sending member state, which should then take any further action in terms of criminal jurisdiction. For UN operations it has been proved that in the vast majority of cases the member state does not undertake any measures – which indicates that this accountability structure contains some problems, one of these being the risk that the immunity of international personnel could trigger the loss of legitimacy and credibility among the local population.⁷⁵

Theoretically OCom or HoM have to ensure that their personnel are aware of complaint procedures which exist for each mission. All personnel have the right and obligation to report cases of serious misconduct and criminal activity, and the right to complain to the HoM, to the relevant institutions of their sending state or to the institutions in Brussels.⁷⁶ Serious incidents should be reported through the chain of command in accordance with the specific reporting procedures established for each operation.⁷⁷

1.3.4 Pre-Deployment Training

Shortly after the Feira European Council the EU committed itself to developing appropriate common standards and modules for training in the different civilian priority areas identified in Feira, while at the Göteborg European Council, the EU adopted the plan to develop common training modules and standards in the area of rule of law.⁷⁸

⁷¹ Council of the EU, 12504/05, Council Decision concerning the Conclusion of the Agreement in the form of an exchange of letters between the EU and the Government of Indonesia on the tasks, status, privileges and immunities of the EU Monitoring Mission in Aceh (Indonesia) and its personnel. Brussels, 28 September 2005 (CEU 12504/05).

⁷² See Generic Standards of Behaviour CEU 8373/3/05 REV 3.

⁷³ See Council of the EU, 10773/03, Agreements between the European Union and the Republic of Uganda, as well as between the European Union and the Democratic Republic of Congo on the status of forces of the EU Military Operation in the DRC. Brussels, 26 June 2003 (CEU 10773/03).

⁷⁴ See Council Joint Action 2005/643/CFSP of 9 September 2005 on the European Union Monitoring Mission in Aceh (Indonesia). Brussels (CJA 2005/643/CFSP).

⁷⁵ See Hansen (2002), 81.

⁷⁶ See e-mail interview with Jürgen Scholz (see footnote 66).

⁷⁷ The chain of command is similar in all operations: Military operations are conducted under the responsibility of the operation commander (EUOC). The EU Military Committee (EUMC) monitors the proper execution of the operation, and receives reports from the commander at regular intervals. The chairman of the EUMC, in turn, reports to the PSC on the conduct of the operation, while the PSC reports to the Council. See e.g. *Concordia*: Council Joint Action 2003/92/CFSP of 27 January 2003 on the European Union military operation in the Former Yugoslav Republic of Macedonia. Brussels (CJA 2003/92/CFSP) and *Artemis*: Council Joint Action 2003/423/CFSP of 5 June 2003 on the European Union military operation in the Democratic Republic of Congo. Brussels (CJA 2003/423/CFSP). The chain of command for civilian missions usually involves the head of mission leading the operation, assuming its day-to-day management and reporting to the SG/HR through the EUSR. The EUSR then reports to the PSC and to the Council through the SG/HR. The SG/HR gives guidance to the head of mission through the EUSR, while the PSC exercises political control and provides strategic guidance.

⁷⁸ See Council of the EU, 14513/02, Comprehensive EU concept for missions in the field of Rule of Law in crisis management, including Annexes. Brussels, 19 November 2002 (CEU 14513/02).

But since then the training itself has been chiefly a national responsibility. Member states are expected to provide the EU with well-trained personnel. Further training at EU level is regarded as "additional training".⁷⁹ Work at the EU level on the issue of training for ESDP is connected with three training actors: the European Security and Defence College (ESDC), the European Police College (CEPOL) and the EC Project on Training for Civilian Aspects of Crisis Management.

The ESDC was established by the EU Council in July 2005. It consists of a network of national institutes, colleges and institutions within the EU that deal with security and defence policy issues in order to provide training in the field of European Security and Defence Policy. The ESDC training activities are organised into ESDP high-level and orientation courses. Participants are normally military or civilian personnel working for EU Member States, acceding states and the EU institutions.⁸⁰ Policy decisions on curricula are taken by representatives of all 27 member states (the steering committee of the ESDC); substance of the individual courses is developed in the Executive Academic Board of the ESDC, composed of academic advisors from all institutions participating in the academic activities, especially those who take part in the respective academic year.⁸¹ The EC Project for Civilian Aspects of Crisis Management (ECP) was started up in 2001 by the EU Commission. As its main audience it targets diplomatic, civilian and military key personnel of EU member states and personnel for EU-led missions, and includes core and specialised courses.⁸² CEPOL, lastly, is a network to bring together the national training institutes for senior police officers in the member states. It was established in 2005 by a Council Decision.⁸³

A series of documents identifies human rights training needs. In 2005 the EU prepared a list of training requirements for ESDP,⁸⁴ which was reviewed again in May 2006.⁸⁵ Among the various requirements, "knowledge

of International Law including International Humanitarian Law and human rights issues, gender issues and child rights issues, including their application in the context of ESDP missions/operations" is listed at all different levels,⁸⁶ and for all training audiences,⁸⁷ except for Civil-Military Staff at the basic and specialisation courses. Furthermore a Draft EU Training Program in ESDP has been drawn up,⁸⁸ which includes the current version of the Academic Program of the three main training actors for ESDP training. The CEPOL work programme 2007 lists human rights and police ethics as a requirement within leadership training.⁸⁹ For 2006 the programme of the ECP offers courses on human rights, child protection and the rule of law, plus a specialisation course on DDR, while a course on gender development has been added to a similar program for 2007. Thus the proposal of the Draft Operational Paper on the Implementation of UN Security Council Resolution 1325 to take up measures to ensure gender training seems to have been taken into consideration.⁹⁰ In respect of such improvements, training standards of other international organisations are now also being taken into consideration in order to ensure complementarity.⁹¹ The UN, UNICEF, Save the Children, the OHCHR, the Secretary-General's Special Representative on Children and Armed Conflict, the ICRC and various NGOs have all indicated their willingness to assist in training EU personnel. Furthermore, a high-level EU-UN staff-to-staff steering group discusses twice a year the developments with regard to co-operation, best practices, and training.⁹² In addition, in order to prevent any violations of human rights and breaches of the standards by mission staff, the "Generic Standards of Behaviour" stipulate that pre-deployment training of personnel should include education on prescribed standards of behaviour. Particular attention should be given to international law, including humanitarian law and human rights issues. The "Draft Guidelines on Protection of Civilians in EU-led Crisis Management Operations" also demand that in the preparation of relevant

⁷⁹ See Hazelzet (2006), 572.

⁸⁰ ESDP Newsletter, Issue 2, June 2006, online at: http://www.consilium.europa.eu/uedocs/cmsUpload/ESDP_Newsletter_ISSUE2.pdf.

⁸¹ Interview with Rolf-Werner Markus, Bundesakademie für Sicherheitspolitik, 7 February 2007.

⁸² See Council of the EU, 10547/04, ESDP Presidency Report 2004. Brussels, 17 December 2004 (CEU 10547/04), para. 23–25.

⁸³ Council Decision 2005/681/JHA.

⁸⁴ See Council of the EU 7774/2/05 Rev 2, Implementation of the EU Training Concept in ESDP – Draft Analysis of Training requirements in the field of ESDP. Brussels, 14 April 2005 (CEU 7774/2/05 Rev 2).

⁸⁵ Council of the EU, 8624/3/06 Rev 3, Analysis of Training Requirements in the field of ESDP – Draft Review 2006. Brussels, 19 May 2006 (CEU 8624/3/06 Rev 3).

⁸⁶ General/Basic ESDP Preparation Training, Specialisation and Generic Training, Mission Training.

⁸⁷ Diplomats, Civilians, Military, Police, Civil-Military, Candidate Countries, Third States.

⁸⁸ Council of the EU 5561/06, Draft EU Training Programme in ESDP (2006–2008). Brussels, 23 January 2006 (CEU 5561/06).

⁸⁹ Accessible at <http://www.cepol.net/KIM/plaatjes/pictemp185125.pdf>.

⁹⁰ Council of the EU, Implementation of UNSCR 1325 in the context of ESDP. Brussels, 29 September 2005 (CEU 11932/2/05 Rev 2).

⁹¹ See CEU 14513/02, Annex.

⁹² See Hazelzet (2006), 572.

training curricula and materials special attention should be paid to human rights, and the rights and protection of children and other vulnerable groups, including the special needs of women and girls to be protected from sexual exploitation and abuse, as well as trafficking, gender mainstreaming and HIV/AIDS awareness.⁹³

At present, some individual member states do integrate human rights elements into their training for military and civil mission staff, with differing priorities. It is still a question to which extent the decisions listed above on the integration of human rights training on EU level have been put into practice. The most recent final training report of the EU on ESDP training does not mention the term human rights at all,⁹⁴ while according to the report ECP training has, at least, successfully provided the EU with well trained experts on rule of law. Regarding ESDC high level and orientation courses, to date, human rights play a marginal role, due to the given overall objective to discuss all aspects of ESDP.⁹⁵ This could be changed, of course. It would be up to individual member states that could, in close co-operation with the Council secretariat, set new priorities within ESDP training and thus promote a stronger human rights agenda for ESDC and other EU training for ESDP missions. Discussions on the integration of human rights on different levels are at an early stage and should be taken forward by member states who want to see an ESDP that does justice to EU human rights obligations and commitments. Central training components in this respect could be basic knowledge of international and regional human rights protection, practical fact-finding, monitoring and reporting of human rights violations, and the application of standards of behaviour within the mission and towards the civilian population. Training should also deepen awareness of gender-sensitive relations with the civilian population and deepen knowledge on anti-discrimination measures.

1.4 ESDP Crisis Management Capabilities – a Brief Overview

Crisis management has been a focal point of attention for the EU since 1999 when the HR/SG Javier Solana

defined crisis management tasks as one of the core issues of the process of strengthening CFSP. Since then the EU has demonstrated that it can rapidly deploy military and civilian operations, whether in the context of a UN operation, whether with recourse to NATO assets and capabilities or autonomously. Regarding crisis management co-operation with other organisations, the EU has vastly increased its involvement with, *inter alia*, the UN, the African Union, OSCE, ASEAN as well as with ICRC and international NGOs.⁹⁶ Between the EU and the UN, for instance, a Joint Declaration on EU-UN Co-operation covering both civilian and military aspects of crisis management was signed on 24 September 2003.⁹⁷

On the whole, the EU does now have at its disposal an institutional infrastructure with a capacity to carry out crisis management operations. This is, however, undeniably still work in progress. The following two chapters will briefly summarise the present state of military and civilian capabilities of the Union.

1.4.1 Military Crisis Management Capabilities of ESDP

With the aim of putting at the Union's disposal forces capable of carrying out the Petersberg tasks – including combat-like operations – from 1999 on the EU member states set themselves a military capability target called the Headline Goal. It was to be met by the end of 2003 and called for EU member states to be able to deploy 60,000 troops within 60 days, sustainable for a year, and for smaller rapid response components deployable on a much shorter timescale.

With the Berlin plus agreement (2003) NATO granted the EU access to its assets and capabilities. The agreement comprises four principles: assured EU access to NATO operational planning, availability to the EU of NATO capabilities and common assets, NATO European command options for EU-led operations, including the establishment of terms of reference for a European role for NATO's Deputy Supreme Allied Commander Europe (DSACEUR), and adaptation of the NATO defence planning system to incorporate the availability of forces for EU operations.

⁹³ See Draft Guidelines on Protection of Civilians CEU 14805/03.

⁹⁴ See Council of the EU, 10188/06, Final Training Report. Brussels, 6 June 2006 (CEU 10188/06).

⁹⁵ Interview with Rolf-Werner Markus, Leitender Regierungsdirektor, Bundesakademie für Sicherheitspolitik, 7 February 2007.

⁹⁶ See Hazelzet (2006), 566.

⁹⁷ See Joint Declaration on UN-EU Co-operation in Crisis Management, 12510/03. New York, 24 September 2003, Press 266 (JD 12510/03).

The question of operational planning headquarters was solved with the agreement between member states to establish a permanent small cell within NATO's operational headquarters, SHAPE, for EU operations using NATO assets.

For autonomous EU operations, operational planning should take place in national headquarters. In 2003, though, it was agreed that operational planning in the EU Military Staff (in the recently established civil-military planning cell) is another option in case of civil/military cooperation being required and no national headquarter being available.

In terms of the enhancement of military capabilities, EU member states have committed themselves to the establishment of 15 rapidly deployable battle groups, which will be able to reach trouble spots within 15 days. In May 2004, EU defence ministers adopted a new "Headline Goal 2010". This capability strategy is aimed at the establishment of a European Armaments Agency and a civil-military cell able to set up an operation centre rapidly, the completion of the development of the battle groups – with a rapid deployment capacity of only ten days after EU decision – and for a series of other infrastructural, co-coordinative and qualitative measures. Substantial progress has been achieved with respect to these goals: the civil-military cell has been operational since 2004 and the battle groups will be fully operational by January 2007.⁹⁸

Beside the purely military capabilities, the European Gendarmerie, a military police force launched in early 2006, needs to be mentioned. The non-permanent force with executive functions will have 800 police officers available to deploy within 30 days notice and a pool of 2,300 reinforcements on standby. The force will be used for post-conflict peacekeeping, maintaining public order and smoothing the difficult transition from military to civilian operations in crisis areas.⁹⁹

With the help of all these recently established military capabilities and the new structural mechanisms of PSC, EUMC, EUMS, which support them, the EU has, since 2003, launched five military operations.

1.4.2. Civilian Crisis Management Capabilities under ESDP

The EU Security Strategy defines civilian crisis management simply as "helping restore civil government after crises".¹⁰⁰ In essence, it is a tool for international actors to help to create structures which enable the state to provide a secure environment, public order and the functioning of the state and its administration as services to its citizens. According to Dwan, civilian crisis management is "not a 'soft' option for intervention but a fundamental element in building a sustainable peace". It represents "an approach that is centred not on the application of overwhelming military force, but rather, on the provision of security and safety to the citizens of a state through a human rights-based rule of law".¹⁰¹

EU crisis management has a long tradition and is basically carried out by the Commission. Special attention is given to crisis prevention.¹⁰² Nevertheless, Pillar II of the EU (CFSP/ESDP) is also involved in the civilian crisis management of the Union. The Council itself has civil crisis management tools at its disposal and is continuously strengthening that area with the help of the structural mechanisms mentioned above. At the Feira Council in June 2000 EU civilian crisis management capacity was divided into four priority areas: policing, rule of law, civilian administration and civil protection. These have been complemented by monitoring capabilities and support to Special Representatives of the EU. Nearly 400 experts have been named by member states to cover human rights, political affairs, gender and security sector reform. In addition, 100 experts have been trained as part of "Civilian Crisis Response Teams", including a few human rights experts. In January 2007, the need to consider increasing the number of human rights experts in this pool in line with EU human rights policy was identified at the level of PSC. So member states are presently working on the achievement of the "Civilian Headline Goal 2008" to refine and complete existing capabilities which are based on civil servants that could be seconded by member states – more than 5.500 police officers, more than 600 rule of law experts, 500 for civil administration and nearly 5000 for civil protection.

⁹⁸ "Vom 1. Januar 2007 an gewährleistet die EU die Einsatzbereitschaft von jeweils zwei solcher Gefechtsverbände zur schnellen Krisenprävention pro Halbjahr. Deutschland wird im ersten Halbjahr 2007 eine 'Battlegroup' mit Finnland und den Niederlanden aufstellen. Von 2013 an soll auf der Basis der Kooperation zwischen Deutschland, Frankreich und Polen im Rahmen des so genannten 'Weimarer Dreiecks' die ESVP intensiviert und eine gemeinsame 'Battlegroup' eingerichtet werden." Bendiek (2006), 30.

⁹⁹ See Fraser (2006).

¹⁰⁰ A secure Europe in a better world: European Security Strategy. Brussels, 12 December 2003.

¹⁰¹ Dwan (2003), 22.

¹⁰² The commission strategy heads at the root causes of conflict, takes up cross-cutting issues such as drugs and trafficking in human beings, focuses on rapid response to nascent conflicts and builds on international cooperation.

Human rights tasks – even if they are de facto performed in theatre – have not been shaped as a separate category of tasks within ESDP activities of civilian crisis management. Within existing categories, activities of policing and those within the framework of establishment of rule of law are obviously related, though, to human rights and will be explained in greater detail in the following. In late 2006, human rights expertise was included in the job descriptions of personnel identified in the framework of the Civilian Headline Goal 2008.

1.4.2.1 Policing

In essence, it has been widely accepted that the necessary precondition for sustainable peace and security is that law and order be linked with an adequate judicial system. In the long-term process of structurally rebuilding a country, police and judicial systems are required to guarantee justice,¹⁰³ which the government in post-conflict societies is often incapable of providing – particularly when measured against international human rights standards. Thus, international policing largely involves encouraging civilian policing that respects human rights, while police reform constitutes one important aspect of the reconstruction process of the security system. The latter was recognised by the UN in the 1990s as a principal element in the rebuilding of state structures in post-conflict societies. Since then, the EU has also developed into an important international actor that sends international police into crisis areas.¹⁰⁴ It regards its police missions as a means to advance security sector reform in support of peace in target countries through the dissemination of “best European policing practices”,¹⁰⁵ and holds the view that international policing plays a crucial role in establishing stability in post-conflict situations – situations in which only a democratic, human rights-oriented po-

lice force is capable of safeguarding the implementation of a peace process.¹⁰⁶ Thus civilian policing has assumed a leading role in improving EU Crisis Response. Whereas earlier UN police missions in post-conflict situations operated according to the so-called SMART concept,¹⁰⁷ today five areas can be roughly differentiated in terms of the tasks and mandates of policing operations: monitoring and advising, training, local reform, building a new force, and executive policing. In the majority of missions, civilian police (CIVPOL) are unarmed and do not have executive powers (unlike the military police). For the implementation of a peace process to have any prospect of success, the police must show that they can gain the trust of all parts of the community.¹⁰⁸ As John McFarlane, researcher on Australian international policing, states, “the influence and effectiveness of CivPol is based on moral authority rather than the threat of force”.¹⁰⁹

1.4.2.2 Rule of Law

Policing reform, however, is of little value when the judicial system is corrupt and is not based on a system of rule of law, since the absence or corruption of national judicial and legal capacity not only represents a cause of conflict, but also an obstacle to a sustainable resolution.¹¹⁰ Consequently, judicial reform – as an imperative component of post-conflict reconstruction – must also be included in the reconstruction process of a crisis-torn society. It is important that “reform does not require creating an ideal society or advanced democracy, but it does require functional mechanisms to deal with abuses of authority within the public security system”.¹¹¹ In order for human rights to be effective, they have to be protected on the basis of the rule of law by means of institutional structures.¹¹²

¹⁰³ See Schmidt (1998), 36; Dziedzic (1998), 11.

¹⁰⁴ See Hansen (2002), 25; The Council of the EU has approved concrete objectives for the police. See CEU 14882/1/00, REV 1.

¹⁰⁵ Quoted from Merlingen (2005), 298.

¹⁰⁶ This is also the dominant perspective in the literature: see Call/ Barnett (2000), 44; Call/ Stanley (2001), 151–172; Hansen (2003), 175–179 or Merlingen (2005), 298.

¹⁰⁷ Supporting human rights, *Monitoring the performance of local forces, Advising local forces, Reporting of incidents, and Training local forces*. See Mobekk (2005), 1.

¹⁰⁸ See Scholz (2005a), 1–3.

¹⁰⁹ McFarlane (2001), 10.

¹¹⁰ See Carlson (2006), 2.

¹¹¹ Oakley/Dziedzic (1998), 510–512.

¹¹² According to a report by the Secretary General of the UN, rule of law, “...refers to a principle of governance in which all persons, institutions or entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced, and independently adjudicated, and which are consistent with international human rights norms and standards.” UN Document S/2006/616, *The Rule of Law and Transitional Justice in Conflict and Post Conflict Societies*, Report of the Secretary General, 23 August 2004, 4.



The EU made rule of law a priority,¹¹³ and has elaborated a concept for missions in this field.¹¹⁴ At the Göteborg European Council two generic concepts of rule of law missions were elaborated: “Strengthening the rule of law” missions and “Substitution for local judiciary/legal system” operations. In the first case personnel in the field of rule of law are deployed essentially to educate, train, monitor and advise with the aim of bringing the local legal system up to international standards, in particular in the field of human rights. This includes technical assistance, advice on institutions related to capacity building (training, education, and standard setting), monitoring and mentoring of personnel, and the application of legislation and administrative procedures. Substitution missions for the local judiciary system, on the other hand, involve the deployment of personnel to carry out executive functions, notably where local structures are failing. The objective here is to consolidate the rule of law in a crisis situation in order to restore public order and security. These missions thus concern the functions of the courts, the prosecution system and the running of prisons as well as the provision of defence lawyers.¹¹⁵ The general objective of both types of mission is “to provide for complete and sustainable judiciary and penitentiary systems under local ownership and meeting rule of law and human rights standards in the mission area”.¹¹⁶

¹¹³ See CEU 13309/01. Strengthening of the rule of law was identified by the Feira European Council as one priority area for targets in civilian aspects of crisis management. The Göteborg European Council set concrete targets in the field of rule of law, to be attained through voluntary contributions by 2003. See CEU 14513/02.

¹¹⁴ See CEU 141513/02 and EU Doc. 9792/03, Comprehensive EU Concepts for missions in the field of rule of law in crisis management, including annexes. Brussels, 26 May 2003 (EU 9792/03).

¹¹⁵ See CEU 14513/02.

¹¹⁶ CEU 14513/02.

2 Crisis Management Operations and Human Rights

2.1 The Significance of Human Rights in Terms of Crisis Management Operations

Grave human rights violations often provoke conflict and humanitarian crises and always aggravate them. Conflict-related deaths, displacement, and the execution of prisoners, to mention only three types of incident, are assaults on fundamental rights. The restriction of freedom of movement and torture are as frequent in internal conflicts as the rape of women or girls by soldiers and forced prostitution, while many conflicts are caused by the denial of fundamental rights as regards food, respect for cultural life or participation in society's decision-making processes. Furthermore, the collapse of civic institutions and infrastructure, associated with armed conflict, subverts civil, economic, political and social rights. In situations of armed conflict, the interdependence of all human rights becomes visible. Respect for human rights is essential for genuine peace. Helping to guarantee them can accordingly prevent conflict arising and stabilise post-conflict situations. With regard to this potential of human rights, their protection plays an essential role in such situations, since statistics prove that the risk of renewed escalation and outbreak of violence is ten times higher in a post-conflict situation than before a war; and although the risk of falling back into violence decreases within a decade, it remains significantly higher than in times prior to the conflict.¹¹⁷ Consequently, human rights concerns are a key element in peacekeeping,¹¹⁸ and in peacebuilding,¹¹⁹ and should therefore be incorporated into all peace

operations. Ian Martin states in this respect: "I want to say clearly ... that all my experience teaches me that a human rights presence in the field, with as much local outreach as possible, is the most potent tool we have in the protection of human rights in crisis situations."¹²⁰

The building of functioning human rights institutions will strongly contribute to a sustainable peace. What Mary Robinson, former UN High Commissioner for Human Rights, expressed with regard to Kosovo is as true for any other region in crisis: "Any durable solution to the crisis in Kosovo will have to be built on a solid foundation of respect for human rights infrastructures, on strong national and local human rights institutions, and on a culture of respect for human rights and tolerance."¹²¹

2.2 Human Rights Implications of Military Interventions

While the main focus of this study is on the human rights protection offered by civilian aspects of EU peace operations, the question arises, nevertheless, whether and how military operations are related to human rights. Does the intervention serve human rights? Does the operation potentially even threaten the civil population and their human rights? What are the reasons behind an EU decision to intervene with military means? Do human rights play a role within a necessarily complex decision-making process?

¹¹⁷ See Collier (2003), 104.

¹¹⁸ Peacekeeping is the stationing of multi-national troops to guarantee peace by keeping the conflicting parties apart from each other or to monitor the keeping of a peace agreement. Peacekeeping can be carried out through more or less robust operations. Just as peacemaking it only aims at a "negative peace". The difference to peacemaking is that the latter describes use of civilian or military measures (e.g. mediation, sanctions, military intervention) to end the actual fighting. See Schneckener (2005), 18.

¹¹⁹ In this paper peacebuilding is understood in the sense of peace consolidation. It aims at dealing with political, economic, social and psychological consequences of civil war in a comprehensive way and at remedying structural causes of conflict. Peacebuilding is a long-term undertaking, in which the strengthening of local capacity and the creation and guarantee of a basis for a culture of peace is central. The objective of peacebuilding is "positive peace". See Schneckener (2005), 18.

¹²⁰ Martin (1999), 13.

¹²¹ Robinson (1999), para. 82.

The very aim of crisis management operations – no matter whether military or civilian – according to Hazelzet is “to create stability and foster a safe environment in which people are respected and free” and to prevent human rights catastrophes unfolding.¹²² She acknowledges, nevertheless, the complexity of reasoning behind a decision for intervention that may be based on a broad range of considerations. In her view, three factors could explain the conditions under which the EU intervenes through an ESDP mission, namely norms, institutions and interests. While in her opinion human rights protection ranges among the normative factors as protection of human rights is a key objective of the CFSP, she proposes a point of view that it may be a matter of perception whether it is in our “interest” to stop human rights atrocities.¹²³

Hazelzet’s deliberations are a first step into a large field that merits further research. Such an analysis of EU reasoning behind intervention, however, cannot be undertaken within the scope of this present study. So what are the main questions that should be explored from a human rights perspective?

The notion of “humanitarian intervention” comes into view here, defined as “the threat or use of force across state borders by a state or group of states aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the state within whose territory force is applied”.¹²⁴ Controversies among politicians and academics continue, since the debate on this issue raises profound and difficult legal and moral questions. Potential harms stand vis-à-vis unverified benefits. However, there is also the question of alternatives in cases where genocide, ethnic cleansing or similar horrendous atrocities are already under way. Undeniably, successful conflict prevention is in every respect the better solution – but it does not solve the question of how to react once this chance has been missed. Thus, the UN Charter clearly recognises that force – under the mandate of a Security Council Resolution and with a broad international consensus – might be applied in certain circumstances when all non-violent options have been exhausted and

when it is regarded as the only effective way to protect civilians. According to a report by the International Council of Human Rights Policy even most of the NGOs working on human rights would argue that no necessary bond exists between pacifism and the defence of human rights.¹²⁵ Since the early 1990s, military intervention has increasingly tended to be regarded as legitimate in situations where human rights are being abused and violated. This tendency is accompanied by a broader internationalisation of defence and security, a development of which the ESDP and its military operations and capabilities are one component.

The EU has not developed a formal set of criteria or an informal framework for decision making on military intervention, though. Javier Solana puts military intervention in a context of the “values and principles” of the EU: “(T)he Union has to be prepared to use military assets and resources [...] The deployment of troops will only ever be undertaken when the situation absolutely demands it. But our credibility in being able to offer a comprehensive response depends on our ability developing a military crisis management capacity at a European level [...]. We are not in the business of doing this for its own sake. But in support of the values and principles for which the European Union is respected worldwide”.¹²⁶ The European Security Strategy itself puts military means in the context of a series of other, more important tools to protect Europe’s security, and adds that “in almost every major intervention, military efficiency has been followed by civilian chaos. We need greater capacity to bring all necessary civilian resources to bear in crisis and post-crisis situations”.¹²⁷ While declaring the establishment of “the rule of law and protecting human rights” in connection with other civil instruments as “the best means of strengthening the international order”,¹²⁸ the ESS does not, however, offer a framework for decision-making for military (or civil) interventions. It is not easy to understand the reasons behind an EU decision in favour of or against a military intervention.

The best known and internationally recognised set of criteria was developed by the International Commission on Intervention and State Sovereignty in its report “The

¹²² Hazelzet (2006), 570.

¹²³ Hazelzet (2006), 570.

¹²⁴ Holzgrefe (2003), 18.

¹²⁵ See Human Rights Crises, NGO Responses to Military Interventions, International Council on Human Rights Policy, Versoix, Switzerland (2002), 12–15.

¹²⁶ Solana (2000b).

¹²⁷ European Security Strategy, “A Secure Europe in a Better World”, 12.

¹²⁸ See chapter 1.1.

Responsibility to Protect".¹²⁹ The Commission argues that when a sovereign state that has a responsibility to protect its people from serious harm that may result from e.g. repression or state failure is unwilling or unable to do so, that responsibility must be borne by the broader international community.¹³⁰ It asserts six criteria for military intervention:

- Right authority: Security Council authorisation should be sought in all cases.
- Just cause: Only large scale loss of life or large scale "ethnic cleansing" are considered just cause.
- Right intention: The primary purpose of the intervention must be to halt or avert human suffering.
- Last resort: Every non-military option for a peaceful resolution of the crisis has been explored.
- Proportional means: The scale and intensity of the intervention should be the minimum necessary.
- Reasonable prospects: There must be a reasonable chance of success in averting the suffering.

The Study Group on Europe's Security Capabilities undertook a valuable attempt to develop a set of seven "principles for operations in severe insecurity that apply to both ends and means" in their report "Human Security Doctrine for Europe" (HSD).¹³¹ The strengthening of the EU's military capabilities is explicitly welcomed in the HSD in order for the Union to be able to protect the human rights of those communities who are living in threatened areas, namely failing states, anywhere in the world. The Union, the HSD maintains, has this obligation not only for moral and historical reasons, but also in order to ensure that Europe can live in security and peace; otherwise the risk remains that insecurity and corrupt economies may be exported from failing states to the European continent.¹³² But, and this is important, the HSD also lists a series of requirements ("principles") for a justified and qualified intervention: the primacy of human rights, clear political authority, multilateralism, a bottom-up approach, regional focus (to prevent the spread of violence), the use of legal instruments, and the appropriate use of force. The EU, however, has not yet endorsed these or any other similar criteria. The adoption of such a catalogue – potentially as a development of the ESS or as a high ranking policy

paper – would highly increase the transparency and accountability of EU decisions on military intervention. Generally, a military operation launched either during armed conflict itself or in its immediate aftermath may very well serve highly desirable purposes like protection of or assistance for the local population. Although these military protection and assistance initiatives alone can achieve little beyond temporary containment of a situation, they may have a substantial impact on the security of the local population and thus, at the very least, on the right to life. Whether by means of security sector reform (SSR) in military areas or by protection initiatives, seeking to protect civilians from the violence of armed conflict through military intervention in the midst of conflict, to separate combatants (peace enforcement), to protect safe areas (robust peacekeeping) or to monitor cease-fires (peacekeeping) – military intervention may be a means of preventing or mitigating conflict and thus also constitute efforts to protect the fundamental human rights of the civilians on the ground.¹³³ While EU interventions are based on these assumptions and concepts, an impact assessment of individual operations may still show a different reality. Only evaluations in the field can show whether the Union's commitment to its own standards are actually met by the forces on the ground.

2.3 Human Rights Tasks in Civilian Crisis Management Operations

Human rights tasks in civilian operations have been carried out by field personnel since the early nineties – one of the first and prominent examples being the UN operation ONUSAL in El Salvador. Since then, so-called human rights monitoring, which in fact includes a range of different responsibilities, has evolved steadily and is part of the ongoing activities of the UN High Commissioner for Human Rights.¹³⁴ Tasks may include monitoring the current human rights situation and publishing reports, monitoring national and local election processes and monitoring re-integration of ex-combatants into civil society. Assisting in activities of hu-

¹²⁹ See International Commission on Intervention and State Sovereignty (2001): The Responsibility to Protect.

¹³⁰ See *ibid.*

¹³¹ See Study Group on Europe's Security Capabilities (2004): Human Security Doctrine for Europe.

¹³² See Marischka (2005), 3–5.

¹³³ Taking as a basis the OECD Guidelines, the security sector can be defined as a system which, includes e.g.: armed forces; police; gendarmeries; paramilitary forces; intelligence and security services; coast guards; border guards; customs authorities; reserve or local security units. See Council of the EU 12566/4/05 REV 4, EU Concept for ESDP support to Security Sector Reform (SSR). Brussels, 13 October 2005 (CEU 12566/4/05 REV 4).

¹³⁴ The Office of the High Commissioner for Human Rights lists 11 human rights components within peace missions in April 2007, <http://www.ohchr.org/english/countries/field/field-information.htm#peace>.

manitarian missions, investigating past violations to ensure perpetrators are brought to justice or developing human rights promotion, education and public information campaigns are further vital tasks to be mentioned. In addition, the prevention of violations by an active presence, facilitating conciliation and confidence-building, local-level conflict-resolution e.g. for the safe and voluntary return of refugees and internally displaced persons, or contributing to institution and capacity-building through technical assistance programmes, such as reform of judiciary or police, are tasks carried out in civilian crisis management operations in order to protect and promote human rights.¹³⁵

Constituting essential aspects of peacebuilding, the human rights tasks most relevant for ESDP operations will be briefly presented below.

2.3.1 Monitoring

According to Alston and Weiler “monitoring is an indispensable element in any human rights strategy. Systematic, reliable and focused information is the starting point for a clear understanding of the nature, extent, and location of the problems which exist and for the identification of possible solutions”.¹³⁶ In essence, human rights monitoring describes the collection, verification, and use of information to address human rights problems. While its purpose is to achieve an improvement in the human rights situation, it can involve different sets of activities, such as establishing records of past and/or current human rights violations, making the general public aware of human rights violations, intervening with the authorities to enforce an adequate response to the situation, and reinforcing local capacities to protect human rights.¹³⁷ Monitoring functions may enable operations to alert the international community of imminent crises, especially through the identification of accelerators of gross human rights abuses, and to suggest ways to minimise and prevent individual human rights violations from turning into a larger scale conflict.¹³⁸ There are two fundamental principles of monitoring: impartiality and accuracy. Not only must

monitoring be carried out under these principles, it must also be perceived as impartial and accurate by the people on the ground.¹³⁹

Essentially, monitoring relates to the human rights obligations of the state in question. This includes examination of the implementation of the human rights conventions to which the state is party, its national laws and regulations, and its legal practice.¹⁴⁰ Further references may be found in the respective peace agreements or memoranda of understanding. In some cases, the degree of precision regarding the monitoring mandate makes a big difference – does it, for example, include a permission to investigate individual cases of violations?¹⁴¹ Also, monitoring can be effective only if the follow-up reporting line is clearly established. While for the reporting line handling individual cases has to involve relevant officials, another important aspect is public information on the human rights situation and potential deteriorations or improvements. This can have a dramatic influence on behaviour, decisions and even on territorial movements of the local population.

However, as stated by Andrew Clapham and Florence Martin, “monitoring alone [does] not create the local expertise that needs to remain after the monitors are long gone”.¹⁴² Monitoring, as a reactive strategy, must be employed concurrently with and feed into more proactive strategies such as institution-building, which endeavours to sustain the protection of human rights.¹⁴³

2.3.2 Institution-Building

Institution-building embodies a fundamental part of state- and peacebuilding. It describes assistance to post-conflict governments in the reform or development of national police forces, judicial and prison systems, and political and administrative institutions, and is, thus, a long-term endeavour.¹⁴⁴ Evidently, contributing to the rule of law and an independent judicial system by establishing permanent, independent and effective national institutions for the long-term protection of human rights through civilian missions clearly fosters human

¹³⁵ See Kenny (1996), 10.

¹³⁶ Alston / Weiler (1999), 55.

¹³⁷ See Mæhlum (2001), 53.

¹³⁸ See Bishop (2001), 53.

¹³⁹ See International Human Rights Internship Program (1997), Chapter 4.

¹⁴⁰ See Mæhlum (2001), 53.

¹⁴¹ This was an ongoing dispute between OSCE member states regarding the Kosovo Verification Mission. See Walker (1999), 9.

¹⁴² Clapham / Martin (1998), 131.

¹⁴³ See Bishop (2001), 54.

¹⁴⁴ See Schneckener (2005), 21.

rights protection, as does the reinstitution of the rule of law, including an independent judiciary and fair criminal justice system.¹⁴⁵ An important factor for the prevention of further violations is the establishment of an independent national human rights institution or (and sometimes in addition) an ombudsman institution. The impact of a field mission on the scope and nature of the national institution may be limited but potentially it may exert pressure for it to be established and provide expert advice.

Normally, institution-building implies inter-agency co-operation as this is part of development aid. At the UN level this means UNDP involvement, at the EU level the key actor in this field is the Commission. Although this may sound as if it just implies a number of coordination challenges, in practice it may lead to political tensions between different approaches because human rights monitoring is potentially much more confrontational than institution-building where constructive co-operation with local and national authorities is a condition for common undertakings. Actors in both fields need to develop a common strategy to ensure that a feedback loop is built in between monitoring and institution building-activities.

2.3.3 Civil Society Cooperation and Capacity-Building

The term "capacity building" encapsulates basically two important areas of work: training and human rights education on the one hand, support for non-governmental organisations on the other hand. Capacity building can, *inter alia*, involve training police officers and sensitising them to human rights issues, or provide human rights education to local lawyers and judges in an effort to prevent unfair trials.¹⁴⁶

But the main target group of capacity building is civil society. Support for Non-Governmental Organisations (NGOs) may start with validation of their human rights reports as an important source of information and the establishment of fora where civil society can present and discuss matters of human rights concern, but fi-

nancial or logistic support may play a role as well. Human rights education programmes for the local population may range from the establishment of a human rights radio station or theatre projects up to mediation training programmes. Minorities and vulnerable groups can be supported by training and empowerment programs.

Thus, capacity building is a very important and lasting contribution which a civilian operation can make, since the term describes the development of collective as well as individual capabilities to replace violent conflict by positive and constructive means of conflict resolution.

Human rights education cuts across all monitoring, capacity-building and institution-building activities, which indicates that all these fields are inextricably intertwined with each other. As already mentioned earlier, all the human rights tasks discussed above are in some way connected with each other. Hence only those human rights tasks which are most salient for the respective operation will be discussed in the section on missions below.

2.3.4 Gender Units

Of a slightly different character are the so-called gender units within a mission. Their purpose is the promotion of gender equality and gender mainstreaming in the context of ESDP.¹⁴⁷ Among other aspects, gender units are a way of implementation of article 7 of CEDAW, guaranteeing women participation in political life in their country. Of course, CEDAW is as relevant for post-conflict situations as it is in times of peace.¹⁴⁸ "Article 7 obliges States parties to take all appropriate measures to eliminate discrimination against women in political and public life and to ensure that they enjoy equality with men in political and public life. The obligation specified in article 7 extends to all areas of public and political life [...]. The political and public life of a country is a broad concept".¹⁴⁹ At the same time, CEDAW Art. 3 implies a general obligation to undertake gender mainstreaming measures including legislation, "to ensure the full development and advancement of women,

¹⁴⁵ See Hammarberg/Gavigan (1998), 7-9; Amnesty International (2005), AI Index: ASA 21/017/2005.

¹⁴⁶ See Kenny (1997), 66-67.

¹⁴⁷ See Council of the European Union, Council Conclusions on promoting gender equality and gender mainstreaming in crisis management, 2760th General Affairs Council Meeting. Brussels, 13 November 2006.

¹⁴⁸ In addition, as of November 2006, 185 countries are party to the convention. See <http://www.un.org/womenwatch/daw/cedaw/states.htm>.

¹⁴⁹ Committee on the Elimination of Discrimination against Women, General Recommendation, No. 23, para. 5.



for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men." As most gender units serve the purpose of mainstreaming gender aspects into a mission on all levels, they often do not perform separate tasks as listed in chapters 2.3.1 to 2.3.3 but are there to ensure that monitoring, institution-building, capacity-building and other, less human-rights-related tasks of the mission are performed in a such way that a gender perspective is adequately integrated into all aspects of the mission. Gender units may have an additional component that is associated to a gender-adequate management within the mission. A third aspect may be monitoring the impact of the mission on the local population and ensuring gender-conscious handling of all interaction with the local population.¹⁵⁰ UN Gender Units are charged with providing training for staff to integrate a gender perspective into the various functional areas of peacekeeping. They advise senior management on strategies for integrating gender perspectives into policy- and decision-making, work with DDR units to ensure that the special needs of women are taken into consideration and promote increased participation of women in political decision-making processes. Furthermore, they are active in forming partnerships with local women's groups and civil society organisations and assisting government counterparts to integrate gender perspectives into all aspects of the transition process.¹⁵¹

¹⁵⁰ Literature on the concept of gender units in peace operations is much larger than on the evaluations of such units. For a basic presentation see e.g. UN DPKO (2000).

¹⁵¹ The work of the Gender Unit of United Nations Mission in Sudan (UNMIS), for instance, includes providing training on gender issues for all incoming peacekeeping staff and giving guidance for all components of UNMIS on gender mainstreaming. The Unit provides support to the Government of National Unity and the Government of Southern Sudan and the people of Sudan to facilitate the implementation of policies and programmes to advance gender equality within the context of the Comprehensive Peace Agreement. It collaborates with other UN agencies working on gender issues, governmental bodies and civil society organizations, including women's organizations, and academic institutions. It is also developing a gender action plan which will focus on prevention and response measures to address the high rate of reported incidents of sexual and gender-based violence in Darfur. See UNMIS Gender Unit Website <http://www.unmis.org/English/gender.html> and <http://www.un.org/Depts/dpko/gender/p4.pdf>.

3 ESDP Operations and their Human Rights Aspects

The following overview of ESDP missions aims to highlight the human rights aspects of the operations. Most mandates of ESDP operations do not explicitly refer to human rights as an objective of the intervention, but this is about to change.¹⁵² Efforts are now being made by the EU to integrate human rights advisors on the ground in all current and future operations. The aim is to deploy full time advisors, but due to this being work in progress, in many operations only focal points have so far been established. *EUSEC DRC* and *EUPOL Kinshasa* in the *DR Congo*, the *Eujust Lex* mission in Iraq and the planning team for the new mission in Kosovo have such points of contact while the most recent mission, *EUFOR RD Congo* had two Human Rights Focal Points, one in the Operation Headquarters near Berlin, the other one in Kinshasa. Furthermore, *EUFOR RD Congo* was the first EU operation ever to have a full time Gender Advisor in the field.

Many, if not all EU missions take place in a very complex and conflictual environment and, within the framework of the following overview, it is not possible to summarise even broadly the background to all the conflicts where intervention has taken place. In addition, the international media reports scantily on EU missions – mostly you find a lot of comments by the media and the NGO community before a mission is launched, but once an operation takes up its work and even works well, public interest fades. Updates on mission successes can thus, if at all, often only be found through EU sources or a handful of NGOs.

3.1 Decision-Making

A few words should be said about the decision-making process that takes place prior to an operation – within the structural framework described under 1.2. The decision-making process concerning the launch of an ESDP operation is based on democratic principles. Every member state has an equal voice in the various decision-making committees involved.¹⁵³ Before the initiation of a crisis management operation, an analysis of the imminent crisis situation is undertaken.¹⁵⁴ If this analysis reveals that a crisis situation indeed exists, the PSC begins to debate whether and in what way the Union will contribute to the stabilisation of the respective region. Subsequently, the PSC requests the preparation of an advice by the appropriate Council Working Groups.¹⁵⁵ While the Situation Centre reports on the situation on a daily basis, the Council Secretariat, which comprises military and civilian personnel, tackles the planning of the operation. Furthermore, member states engage in discussing in what way they can contribute to the undertaking. A joint fact-finding mission of the Council Secretariat and Commission sent to the country in question, meanwhile, provides recommendations on potential risks and the nature of the mission.

Next, after reassessing the different advices and reports, the PSC recommends to the Council whether or not to launch a crisis management operation. Under the leadership of the PSC, which instructs the SG/HR and the Secretariat to work out a Crisis Management Concept

¹⁵² The following information was provided by the former Personal Representative of the SG/HR of the Council of the EU, Michael Matthiessen. Interview on 17 November 2006.

¹⁵³ When an ESDP operation is launched, member states can decide if they want to take part or not. If they decide not to participate they will also be exempted from contributing financially to the operation. The rules for financing of ESDP operations are governed by Art 28, paragraph 3, of the TEU. Unless the EU Council decides otherwise, the funding by member states is undertaken on a pro-rata basis. ESDP civilian missions are financed from the CFSP budget that is part of the Community budget. Military operations are financed on a "costs lie where they fall" basis while the standing mechanism Athena manages common costs. See: Speech by Lieutenant-General Jean-Paul Perruche and Speech by Juha Auvinen, 9 October 2006.

¹⁵⁴ The EU has various early warning tools, such as the Situation Centre, the reports prepared on the basis of "watch lists" by the Police Unit and country reports by Heads of Missions. See Hazelzet (2006), 565.

¹⁵⁵ These are the Committee on Civil Aspects of Crisis Management (CIVCOM), the Politico-Military Group (PMG), and External Relations Councillors who deal with the financial aspects of CFSP.

(CMC), such a Concept is drawn up. It outlines the EU's political interests, objectives and major strategic options for responding to the crisis. After the Secretariat has developed and presented a draft CMC based on the conclusions of the fact-finding mission, the PSC discusses the CMC, agrees on it and presents it to COREPER and the Council. COREPER discusses it again before the Council approves the CMC. Then the Council instructs the PSC to draw up strategic options.

The PSC then tasks the EUMC with drawing up strategic military options (MSO) and CIVCOM with developing strategic options for civilian and police action (CSO/PSO). CIVCOM cooperates with the Council Secretariat and the EUMC receives advice from the EUMS. All SOs are then forwarded to the PSC to which the Commission now presents accompanying measures. After evaluating them the PSC forwards the draft decisions on MSO, PSO and CSO to COREPER/Council. The Council formally decides on the Joint Action which includes the mission mandate and the decision to act. A head of mission/operation commander is appointed, and a Concept of Operation (CONOPS) and Operation Plan (OPlan) are developed. The procedure of the drawing up of both, the concept and the OPlan, is similar to the one for Joint Action. The drafts follow similar channels with all the steps from the PSC to CIVCOM or EUMC (depending on the type of mission), and then back to the PSC and the Council for adoption. The head of mission/operation commander are involved in the development of the OPlan and the EUMS has a specific role in writing the "Initiating Military Directive" which transforms the political-military into a military document that military staff can use to plan operations.¹⁵⁶ A clear exit strategy will also be designed. When CONOPS and OPlan have been approved by the Council, the Council finally decides to launch the operation, and the member states commence to send their contributions. The Union needs a minimum of five days after the Council decision to be present on the ground.¹⁵⁷

In 2003, this *modus operandi* was applied for the first time ever. Two military operations were launched – one in Europe (*Concordia*) and one in Central Africa (*Artemis*) – along with two civilian missions in the Balkans (*EUPM* and *Proxima*). By now the EU has completed seven operations altogether (*Concordia*, *Artemis*, *Proxima*, *EUJUST Themis*, *EUPAT*, *EUFOR RD Congo*,

AMM), while nine are still ongoing, and two new ones are in the planning phase (*EUPAT Kosovo* and a mission in Afghanistan).¹⁵⁸ The spectrum of operations covers small-scale civilian operations in support of the rule of law (as in Georgia, *EUJUST Themis*) and medium-scale military missions such as taking over the main peace stabilisation role from NATO's SFOR mission in Bosnia and Herzegovina (*Althea*). The geographical range of these EU operations is remarkable, encompassing not only Europe (e.g. Macedonia), but also Africa (e.g. Sudan), Asia (Indonesia) and the Middle East (e.g. Palestinian Territories). In the following chapters the individual ESDP missions are examined, focusing on the main human rights aspects. The missions have been divided into military and civilian operations, although obviously military missions include civilian personnel while some civilian missions also involve a small number of military experts.

3.2 Military Operations: Military Protection, Assistance and Security Sector Reform Missions

The EU has launched five military operations since 2003: Operation *Concordia* in Macedonia, *Artemis* in the DR Congo, *EUFOR Althea* in Bosnia and Herzegovina, the EU Security Sector Reform Mission in the DRC *EUSEC DR Congo*, and the 2006 mission *EUFOR RD Congo* in Kinshasa.

3.2.1 Concordia

The EU's very first military peacekeeping mission, operation *Concordia* in the Former Yugoslav Republic of Macedonia (FYROM), was launched on 31 March 2003, at the request of the FYROM government.¹⁵⁹ *Concordia* took over from the NATO-led Allied Harmony force and ran until 15 December 2003. It consisted of a staff of roughly 350 with access to NATO capabilities and assets,¹⁶⁰ and its core objective was to improve the overall security situation in Macedonia and contribute further to a stable and secure environment to allow the implementation of the August 2001 Ohrid Framework Agreement.¹⁶¹ A series of tasks were defined in the OPlan: evaluation of the security situation and reconnaissance

¹⁵⁶ Speech by Lieutenant-General Jean-Paul Perruche (Director General, EUMS), 9 October 2006.

¹⁵⁷ Regarding the decision-making process see Hazelzet (2006), 566; Richter (ZIF-Presentation), (2006).

¹⁵⁸ EUPAT Kosovo: CJA 2006/304/CFSP.

¹⁵⁹ See CJA 2003/92/CFSP.

¹⁶⁰ See mission website *Concordia*, online at <http://www.delmkd.cec.eu.int/en/concordia/main.htm>.

¹⁶¹ CJA 2003/92/CFSP.

of the road network and other areas by helicopter, vehicles or on foot, meetings with civilian and military authorities and international organisations, and systematic encounters with the population (civil advisory groups, town councils, non-political gatherings), to name just a few.¹⁶² According to Colonel Pierre Augustin, *EUFOR* Deputy Chief of Staff for Logistics and the Operation Representative from France, the operation "completely fulfilled the mission for which *EUFOR* had been constituted".¹⁶³ However, he also states that *EUFOR* lacked two high value-added capabilities: a team dedicated to information operations to release weekly messages into the area of operation, and legal analysis, such as a specialist in legal investigation or in criminal intelligence to focus legal scrutiny on the situation.¹⁶⁴ According to an International Crisis Group Report, in spite of some practical operational difficulties, *Concordia* could be counted as a success, since it helped to build confidence and stability in the region.¹⁶⁵

On the subject of human rights aspects within the mission tasks, human rights were not explicitly mentioned in the mandate. The provision of a visible military presence, particularly in areas of potential instability and ethnic tension, in order to support stability and confidence building, the focus on observation of the Weapons Collection Program in the field, and the support of international community monitors, however, contributed to the stabilisation and improvement of the security situation in Macedonia. Stabilising the security situation in turn also has an immediate relevance for the protection and promotion of the human rights situation of the Macedonian population.

3.2.2 Artemis and *EUFOR* RD Congo

The withdrawal of Ugandan troops in April 2003 led to a deteriorating security situation marked by gross violations of human rights in the Ituri province of the DRC that endangered the peace process.¹⁶⁶ Thus the EU, responding to an appeal by the UN Secretary-General,¹⁶⁷ launched an Interim Emergency Multinational Force (IEMF), the Military Operation in the DRC, operation *Artemis*, on 12 June 2003.¹⁶⁸ The operation was the EU's first deployment outside Europe, its first military mission to be implemented entirely autonomously outside NATO, and also its first operation under Chapter VII of the UN Charter.¹⁶⁹ It was to function as the bridging element between two phases of MONUC,¹⁷⁰ and to stabilise the situation in Bunia, Ituri's capital, prior to the arrival of a reinforced UN presence in September 2003.¹⁷¹ The mission was tasked to contribute to stabilising security conditions and improving the humanitarian situation in Bunia, and to ensure the protection of the airport, of the internally displaced persons in the camps in Bunia and if required, the safety of the civilian population, UN personnel and humanitarian presence.¹⁷² While the IEMF was able to stabilise the security and humanitarian situation in Bunia,¹⁷³ and was as such certainly relevant for the human rights protection of the resident population, the situation in the surrounding area remained extremely unstable. There atrocities continued, since the mission's limited mandate as to the area of operation had the effect that violent aggression against civilians was pushed out of town, but not out of the region.¹⁷⁴ In addition, MONUC was unable to benefit from assets of *Artemis*.¹⁷⁵ Despite

¹⁶² See Augustin (2005), 2.

¹⁶³ Ibid.

¹⁶⁴ Ibid.

¹⁶⁵ See International Crisis Group (2005a), 49.

¹⁶⁶ Massacres were reported by UN investigators, and some 600,000 people were displaced throughout the region. See Second Special Report by the Secretary-General on the UN Organisation Mission in the Democratic Republic of Congo, 27 May 2003, 3.

¹⁶⁷ See United Nations Security Council, Resolution 1484 (2003), Adopted by the Security Council at its 4764th meeting, on 30 May 2003 (S/RES/1484).

¹⁶⁸ See CJA 2003/432/CFSP.

¹⁶⁹ Operation *Artemis*, led by France, included 1,800 troops. 1,200 were deployed to the town of Bunia. See Peace Operations Factsheet Series, Henry L. Stimson Centre (2004), 5.

¹⁷⁰ See CJA 2003/432/CFSP; MONUC was established in November 1999 to monitor the implementation of the Lusaka Ceasefire Agreement by which the governments of the DRC, Namibia, Rwanda, Uganda and Zimbabwe agreed to end hostilities. See Mansson (2005), 503–506.

¹⁷¹ MONUC was by then provided with a wider mandate, more robust rules of engagement, and an 18,000-strong multinational force.

¹⁷² See UN Security Council Resolution S/RES/1484 (2003), adopted by the SC at its 4764th meeting on 30 May 2003.

¹⁷³ International Crisis Group (2005a), 46.

¹⁷⁴ See Ulriksen (2004), 519; International Crisis Group (2003), 15.

¹⁷⁵ See Peacekeeping Best Practices Unit (2004), 14.

excellent cooperation between MONUC and *Artemis*, none of its staff were willing to re-hat with MONUC after the EU mission had closed.¹⁷⁶ According to a report by amnesty international, human rights abuses persisted in 2005 and 2006,¹⁷⁷ and the EU had and still has to confront allegations that not enough effort has been made towards a sustainable improvement of the conditions in the DRC,¹⁷⁸ notwithstanding three further ESDP operations following *Artemis* including the most recent one, *EUFOR RD Congo*,¹⁷⁹ launched to secure the election period in 2006.

The issue of motives for and legitimacy, effectiveness and sustainability of ESDP missions in general, and of the EU missions in Africa and the DRC in particular has not lost any of its topicality in debates and discussions which include as much criticism as praise. While this debate cannot be discussed in detail here, the necessity for a coherent and sustainable EU intervention in DRC must be underlined. An overall and coherent concept to (re)build and transform the country's institutions, essential services and infrastructure, including the justice, health and educational sectors is needed. In this regard the considerable efforts undertaken by the EU Commission together with the ESDP operations seem to go into the right direction.¹⁸⁰ Thus the effectiveness of the ESDP missions in the DRC must also be considered in the context of the overall EU engagement in the Congo. However, also taking into account activities of other international organisations and the UN in particular, ESDP operations could play an essential role within a coherent strategy – especially if they are planned and undertaken as an opportunity to improve the human rights situation in the country, not least the situation of economic, social and cultural rights.¹⁸¹ In general, focusing on and encouraging hu-

man rights components in the missions' work would have a positive effect on the sustainability of the mission's achievements. The deployment of any mission thus provides an enormous opportunity and a chance to further the peace process by improving the human rights situation.

The autonomous EU-led military operation *EUFOR RD Congo*, which was one of the more controversial operations, was deployed in accordance with the mandate set out in UN Security Council Resolution 1671 (2006) of 25 April. Its execution ended on 30 November 2006. It was tasked to support MONUC during the period encompassing the elections to stabilise the situation if required by MONUC, to contribute to the protection of civilians under imminent threat of physical violence in the areas of its deployment, to contribute to airport protection in Kinshasa, and to execute operations of limited character in order to extract individuals in danger.¹⁸² According to Gutiérrez, the deployment of *EUFOR* must be seen in a wider context which includes the UN Mission MONUC and *EUPOL Kinshasa*, the EU's police mission in the DRC. He states that "EUFOR's presence strengthened MONUC and the EU's global action in the DRC".¹⁸³

Although human rights were not mentioned in the mandate, *EUFOR RD Congo* was highly relevant for human rights protection for the population in the region of Kinshasa. The guarantee of a secure environment for the Congolese population to elect its own government surely contributes to the stabilisation of the peace process and the protection not only of the physical safety of the people but also of their ability to exercise political rights. It was launched in support of MONUC, the UN Mission in the DRC, during the election process

¹⁷⁶ On *Artemis* there has been criticism that a more sustainable contribution to addressing the security situation in the DRC would have been to contribute with troops directly to MONUC, rather than intervene, without any rehatting to or sharing of assets and information with MONUC. Obviously this is not likely given the EU's reluctance to place its troops under UN command and control.

¹⁷⁷ See Amnesty International (2006a), AI Index: AFR 62/017/2006; Peacekeeping Best Practices Unit (2004), 14; for the year 2004 see Third Special Report of the Secretary-General on MONUC S/2004/650, 16 August 2004, Annex 1, para. 1, (S/2004/650).

¹⁷⁸ See for example Brot für die Welt / Diakonie Katastrophenhilfe (2006) or Eitel (2006). The latter provides an overview of pros and cons regarding the EU missions in the DRC.

¹⁷⁹ Council Joint Action 2006/319/CFSP of 27 April 2006 on the European Union military operation in support of the United Nations Organisation Mission in the Democratic Republic of the Congo (MONUC) during the election process, Brussels (CJA 2006/319/CFSP).

¹⁸⁰ Since 2004 the EU Commission has provided humanitarian aid worth €128 million while aid measures covered by the Commission's decision also included the distribution of food, tools, seeds, provision of basic health care, resettlement assistance and support for the re-establishment of primary education. See European Commission (2006): Democratic Republic of Congo: EU Commission provides further €5m in humanitarian aid.

¹⁸¹ Violations of economic, social and cultural rights have been of enormous influence in terms of the conflict dynamics in the DRC. See e.g. Amnesty International (2003a), AI Index: AFR 62/010/2003; Stearns / Wrong (2006); Vaillant (2006), 22.

¹⁸² Wolfgang Burzer, former Human Rights Focal Point for *EUFOR RD Congo*, interview on 16 February 2007.

¹⁸³ Gutiérrez (2006), 23.

and was to work in close cooperation with the UN Mission, which has a distinct Human Rights Division. This division is active in investigations in order to ensure that perpetrators of past human rights abuses are brought to justice. Its mandate also included assistance to the former Government of National Unity and Transition in the promotion and protection of human rights, with particular attention to woman, children and vulnerable persons, providing advice and assistance concerning human rights legislation, and monitoring and documenting human rights violations.¹⁸⁴

EUFOR RD Congo was the first EU operation ever to have a full time Gender Advisor in the field. With the establishment of this function it was intended to make gender issues fully operational and to integrate a gender perspective into the ordinary being the work on all levels of the mission.¹⁸⁵ An important priority was the strong focus on women's rights. Within the different units and staff branches in Kinshasa and Gabon 20 Gender Focal Points were established who closely cooperated with the Gender Advisor. The Gender Advisor held more than 20 meetings with local women's organisations to inform them about the mission, to obtain information e.g. on Congolese Actors for victims of rape and sexual abuse by them and to support them. The Gender Advisor's activities included training of 250 participants of the operation, the edition of weekly gender reports, contribution to the Soldier's Card¹⁸⁶, the establishment of reporting lines for cases of sexual violence and cooperation with MONUC.

Two Human Rights Focal Points (HRFP) were assigned for the operation.¹⁸⁷ Being the Legal Advisors of the Operation Headquarters (OHQ, Potsdam, Germany) and Field Headquarters (FHQ, Kinshasa, DRC), they were responsible for all operational legal issues, in particular the Law of Armed Conflict, Human Rights Law, and the interpretation and application of UN Security Council resolutions, international treaties and customary international law in all operational settings. In addition, the Legal Advisor in the FHQ Kinshasa acted as Gender Officer. Taking part in the whole planning process from the first core planning team meeting to the final version of the Operations Plan, the HRFPs were able to ensure respect for human rights in the specific directives for *EUFOR* (e.g. in its Soldier's Card), to establish an efficient reporting system to control the good conduct of *EUFOR RD Congo* and to assess the human rights situation in the area of operations.

In the preparation phase, the EU OHQ HRFP conducted several human rights training events addressing senior operations staff and *EUFOR RD Congo* personnel in order to make them qualified multipliers in Libreville, Gabon and Kinshasa, DRC, also in cooperation with the respective specialist staff of MONUC and the Gender Advisor. In addition, OHQ *EUFOR RD Congo* produced a mixed family of human rights documents.

¹⁸⁴ MONUC Human Rights Division has developed its mandate in accordance with UN Security Council Resolution 1565 (2004), adopted by the Security Council at its 5048th meeting on 1 October 2004 (S/RES/1565) as confirmed by Resolution 1628 (2005), adopted by the Security Council at its 5272nd meeting on 30 September 2005 (S/RES/1628). See MONUC website <http://www.monuc.org>.

¹⁸⁵ This and the following information were provided by Charlotte Isaksson, Gender Advisor in *EUFOR RD Congo*, e-mail interview 16 April 2007.

¹⁸⁶ See page 39.

¹⁸⁷ The decision not to assign Human Rights Advisors but Focal Points was taken with regard to the shortness of the Operation RD Congo (4 months), the limited amount of deployed forces in the Area of Operations and the existing presence of UN and EU operations/missions (e.g. MONUC; EUPOL; EUSEC). This and the following are based on information provided by Wolfgang Burzer, interview on 16 February 2007.

The **"SOLDIER's CARD EUFOR RD Congo"**¹⁸⁸ constitutes a novelty. It was initialized by the Gender Adviser and the Human Rights Focal Point OHQ and was developed in cooperation with the Cultural Adviser, the Political Adviser and the representatives of the military functional areas. The individual EUFOR soldier on the ground was equipped with that pocket card providing guidelines under the following headings: Mission, General Rules for the Use of Force, Specific Rules to open fire, Self-Defence, General Rules of Behaviour/Human Rights/Gender Issues, Medical Issues.

...

5. GENERAL RULES OF BEHAVIOUR/ HUMAN RIGHT/GENDER ISSUES

Any violation of this Soldier's Card will be considered as serious misconduct. SEA will be investigated and may lead to disciplinary measures being taken, including suspension, immediate repatriation or summary dismissal. EUFOR personnel are obliged to report any concerns regarding SEA and abuse by a colleague through the established reporting mechanisms.

a. General Rules of Behaviour

- (1) Be impartial and do not volunteer any political or social opinions specifically on political persons, political parties or ethnic groups.
- (2) Be firm. In case of tension, talk to the people.
- (3) Always wear uniform or approved attire.
- (4) Do not give anything to children. If you want to give something, give it to an adult (mother, chief).
- (5) Never walk alone outside the Field Camp.
- (6) Do not give any interviews to media unless you are ordered to do so.
- (7) Be polite but determined, and treat everybody in a way you would like to be treated.
- (8) Respect local authorities.
- (9) Traffic in RDC is dangerous. Watch out for children.

b. Human Rights' Core Points

- (1) Transfer of detained persons is allowed only to authorities who are specifically designated by EUFOR RD Congo.
- (2) Report all observations regarding violation of Human Rights via your chain of command.
- (3) Document all observations regarding violation of Human Rights.
- (4) Protection of civilians under imminent threat of physical violence in the areas of your deployment is part of your mandate.
- (5) Take care for particularly vulnerable groups (i.e. women, children).

- (6) You are personally responsible for respecting and promoting Human Rights.

c. Gender Issues

Sexual Exploitation and Sexual Abuse (SEA; Sexual exploitation: Any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including profiting monetarily, socially, or politically; Sexual Abuse: Actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions) are acts of unacceptable behaviour and prohibited conduct for all EUFOR personnel. SEA damages the image and integrity of the EUFOR operation in RDC and erodes confidence and trust in the operation.

It is strictly prohibited for all EUFOR personnel to engage in:

- 1) Any act of sexual abuse and sexual exploitation, or any other form of sexually humiliating, degrading or exploitative behaviour.
- 2) Any type of sexual activities with children (persons under 18 years of age). Mistaken belief in the age of a person is no excuse.
- 3) Use of children or adults to procure sexual activities from others.
- 4) Exchange of money, employment, goods or Services for sex with prostitutes or others.
- 5) Any sexual favour in exchange of assistance provided to the beneficiaries of such assistance.
- 6) Visits to brothels or places, which are declared off-limits.

d. Child soldiers

Children who show a threatening posture are liable to measures by EUFOR, in accordance with the Rules of Engagement (ROE). Examples for such a threatening posture can be:

- 1) Using Force
- 2) Handling weapons in public
- 3) Participation in organized armed deployment
- 4) Otherwise posing a threat to EUFOR.

In these cases, they should be disarmed, if possible, and detained, if deemed necessary. Children have to be separated from adult detainees. If there is any doubt regarding the age of detainees, they will be considered as children. Information about armed groups or armed forces enrolling or using child soldiers shall be reported.

...

¹⁸⁸ "The Soldier's Card EUFOR RD Congo", extracts provided by Wolfgang Burzer, see footnote 182

There were hardly any major outbreaks of violence in the months between and following the two phases of the election. According to Kinzel this shows that the mandate of *EUFOR RD Congo* has proven to be appropriate despite its limitations regarding the mission area (around Kinshasa) and the tasks of the operations. Still, the question whether the mission withdrew too early remains unanswered.¹⁸⁹

3.2.3 EUFOR Althea

In Bosnia and Herzegovina (BiH) the EU deployed its largest military ESDP mission to date, operation *EUFOR Althea*, on 2 December 2004 through Council Joint Action of 12 July 2004,¹⁹⁰ following the decision by NATO at the Istanbul summit in June 2004 to end the SFOR mission in BiH. This ongoing operation is a UN-mandated Chapter VII mission and a Berlin Plus operation.¹⁹¹ A total of 33 countries are contributing to the *EUFOR* military presence of operation *Althea* with an approximately 7,000-strong EU force,¹⁹² reduced to 2,500 by the decision on transition taken on 27 February 2007.¹⁹³ The mission takes place in an environment where several regional and international actors are operating. The main responsibility for human rights is entrusted to the OSCE mission.

In addition to its primary mission of providing deterrence, reassurance and a safe and secure environment, *Althea* is also tasked to provide assistance to the fight against organised crime and to offer capacity-building for local authorities and law enforcement agencies.

These tasks are in line with the European Security Strategy which declares that "(r)estoring good government to the Balkans, fostering democracy and enabling the authorities there to tackle organised crime is one of the most effective ways of dealing with organised crime within the EU".¹⁹⁴

At the beginning *Althea* was criticised for its narrowly defined mandate focusing too much on organised crime,¹⁹⁵ and for including monitoring tasks even though the EU already had two further missions in BiH which carried out monitoring related to security and law enforcement issues (a non-ESDP Monitoring Mission *EUMM* and the EU Police Mission *EUPM*). The International Crisis Group said that by launching *Althea* Brussels aimed "for a mission which was doomed to success by its own lack of ambition,"¹⁹⁶ and that the motives for the deployment of *EUFOR Althea* had much more to do with the eagerness of the Union to boost its credibility as a security actor than with the actual security situation in BiH.¹⁹⁷ Javier Solana declared in 2001 that the Balkans were "a test case for Europe's enhanced Common Foreign and Security Policy,"¹⁹⁸ and one year earlier he had already affirmed that "the Balkans has shown that the European Union can no longer remain a force for peace simply through example. It has also to be forthright in defending the basic values of democracy, human rights and the rule of law on which it is founded".¹⁹⁹

Despite the initial assumption that *Althea* might above all be a test case for the capabilities of ESDP and CFSP, a memorandum of the Interparliamentary European Security and Defence Assembly (by Milos Budin) on "Public Opinion and the Althea Mission" reports various activities of *Althea* in areas relevant for human rights, although the mission's mandate does not directly refer to human rights. That includes especially support to the International Criminal Tribunal for the former Yugoslavia (ICTY) and relevant authorities including the detention of persons indicted for war crimes.²⁰⁰ Amnesty International called in 2004 on the EU to ensure that *EUFOR Althea* actively seeks those indicted by the ICTY for genocide, war crimes and crimes against humanity,²⁰¹ after the organisation had accused SFOR of a range of human rights violations including unlawful detention and had urged the EU to make sure these practices

¹⁸⁹ See Kinzel (2006), 2–3.

¹⁹⁰ Council Joint Action 2004/570/CFSP of 12 July 2004 on the European Union military operation in Bosnia and Herzegovina, Brussels (CJA 2004/570/CFSP).

¹⁹¹ United Nations Security Council Resolution 1575 (2004) on the situation in Bosnia and Herzegovina, adopted by the Security Council at its 5085th meeting, on 22 November 2004.

¹⁹² See EU Council Secretary Factsheet, EU military operation in Bosnia and Herzegovina (Operation EUFOR-Althea), ATH/03 (update 3), 29 November 2004.

¹⁹³ CEU 6896/07

¹⁹⁴ ESS, Solana (2003), 6.

¹⁹⁵ See International Crisis Group (2004), 4.

¹⁹⁶ See International Crisis Group (2004), 4.

¹⁹⁷ See International Crisis Group (2004), 1.

¹⁹⁸ Solana (2001).

¹⁹⁹ Solana (2000a).

²⁰⁰ See CEU 15891/05.

²⁰¹ See Amnesty International EU Office (2004), Launch of EU Military Operation in Bosnia-Herzegovina; Operation Althea-Eufor.

were discontinued by *EUFOR Althea*.²⁰² The report by Milos Budin of 2006 indicates that *EUFOR* "demonstrated its commitment to the ICTY mandate".²⁰³ *EUFOR* has collected intelligence on criminal networks supporting war crimes indictees and carried out search operations and attempts to apprehend fugitives.

Furthermore *EUFOR* is involved in defence reform directly and jointly with the UNDP, the OSCE Mission to BiH and the BiH armed forces, and in particular in the arms destruction programme.²⁰⁴

EUFOR also helped to establish a demining coordination section in the BiH Ministry of Defence as part of the defence reform process.²⁰⁵ Joint demining operations are particularly important for promoting the safe return of refugees and internally displaced people (IDP). In addition, *EUFOR* contributes to creating the conditions for sustainable return through Civil-Military Cooperation (CIMIC). Networking with international organisations, the civilian population, government bodies and NGOs, *EUFOR* activities contribute to a large number of projects in infrastructural, humanitarian, economic and administrative fields.²⁰⁶

In conclusion, *EUFOR* actively contributes to an environment in Bosnia and Herzegovina that is conducive to establishing a human rights culture for the people. This is confirmed by opinion polls showing that people view the *Althea* mission as essential to security and stability and also as a means of improving policies on education, employment, visas and ultimately of integration into the European institutions.²⁰⁷

With regard to the mission's inclusion of a gender perspective, however, the study by Batt and Valenius on the gender aspects in ESDP missions clearly illustrates that a gender perspective has not been incorporated into the work of the mission. Although, according to the authors, mission personnel showed positive attitudes

towards greater participation by women, very little knowledge on gender mainstreaming seemed to exist. Furthermore, the study states that the problem of sexual harassment was persisting. Female soldiers are especially susceptible because of the small percentage of overall mission staff they represent in *EUFOR* – at the time of the study 5.88 % (April 2006) – and their subordinate position in the masculine military culture.²⁰⁸ Because female soldiers often would not know to whom to file the complaint, sexual harassment cases often went unreported.²⁰⁹

3.2.4 EUSEC DR Congo

Another type of operation, the Union's first Security Sector Reform (SSR) Mission, *EUSEC DRC*, was launched in June 2005 following an official request by the Congolese government. *EUSEC DRC* is not a military operation of the same kind as *Concordia* or *Artemis*, which include the deployment of military forces. It is a mission which is, in essence, concerned with capacity building. In order to act as advisors, military experts are assigned to key posts within the Congolese administration, e.g. to the Minister of Defence, to the Chief of the Army and to the Military Structure for Integration.²¹⁰ With the help of these experts the mission is mandated to back the reform of the security sector and "provide the Congolese authorities responsible for security with advice and assistance, while taking care to promote policies compatible with human rights and international humanitarian law, democratic standards and the principles of good governance, transparency and respect for the rule of law".²¹¹ Human rights are, hence, specifically raised in the mandate.

The practical purpose of the mission is to assist the authorities in setting up a Congolese national army. Thereby all former belligerents "have to be integrated into the brigades that will be deployed on the ground" as

²⁰² See Amnesty International (2004), AI Index EUR 05/002/2004.

²⁰³ Budin (2006), 12. The report goes into some detail of the difficulties encountered by the mission which does, however, not call the commitment to ICTY cooperation into question.

²⁰⁴ See Budin (2006), 9.

²⁰⁵ Council of the European Union, Operation Althea – Quarterly Report to the United Nations, Brussels, 2 March 2005.

²⁰⁶ See Budin (2006), 14.

²⁰⁷ Althea – a symbol of ESDP success, Paris, 20 June 2006 Assembly of WEU Interparliamentary European Security and Defence Assembly, press release, <http://www.assembly-weu.org/en/presse/cp/2006/018.php?PHPSESSID=f3137d60>

²⁰⁸ Batt and Valenius (2006), 23.

²⁰⁹ See Batt and Valenius (2006), 15.

²¹⁰ See Council of the EU, Press Release, 8644/05 (Press 105), Brussels, 2 May 2005, Council establishes mission to provide advice and assistance for security sector reform in the Democratic Republic of Congo; and Mercado/ Smitall (20 March 2006).

²¹¹ Council Joint Action 2005/355/CFSP of 2 May 2005 on the European Union mission to provide advice and assistance for security sector reform in the Democratic Republic of Congo (DRC) (CJA 2005/355/CFSP).

stated by General Pierre Michel Joana, Head of *EUSEC*.²¹² *EUSEC*'s efforts (as well as efforts of the UN and third countries) to reform the Congolese army have had mixed results. While a large number of combatants have not yet been through the armed forces reorganisation process, the existing brigades are under-equipped and under-staffed.²¹³ MONUC's July 2006 Human Rights Report reveals that although there are examples of positive conduct, "the routine use of physical violence against civilians, including summary executions, beatings and rape, committed by FARDC soldiers [...] is reported wherever the army is deployed".²¹⁴ The International Crisis Group has very recently stated that "integrated brigades are deployed without the necessary resources or equipment and often resort to taxing and abusing the local population. As a result, the army is still the largest human rights abuser."²¹⁵

However, as indicated by an earlier International Crisis Group Report, *EUSEC* has achieved an important coordinating role in army reform. *EUSEC*'s Chain of Payments Project whereby the mission provided military advisors to check the payment flow at key points is potentially one of the most essential contributions of the operation.²¹⁶

As all EU missions in the DRC, *EUSEC DRC* was to work in close cooperation with MONUC, the UN Mission in the DRC.²¹⁷ *EUSEC DRC* has been extended until 30 June 2007.

3.3 The EU's Civilian-Military Supporting Action AMIS EU

The international community considers the Darfur conflict to be one of the world's worst current humanitarian crises. Starting from two 2004 UN Security Council resolutions, the UN mandated a fully-fledged peace support mission in Sudan (UNMIS) acting under Chapter VII of the UN Charter, with a military and a civil component. This mission has a considerable human rights component. In addition, the African Union established a mission

to monitor the 2004 Humanitarian Ceasefire Agreement, to assist in confidence building and to secure the protection of civilian and humanitarian operations, in its present shape called Amis II. In response to a request by the African Union (AU), the EU established the EU civilian-military *AMIS EU Supporting Action (AMIS EU)* on 18 July 2005 to support the AU Amis II mission in the Darfur region of Sudan.²¹⁸ On the same day, a Special Representative for Sudan was appointed.²¹⁹ In view of the scale of abuses to which civilians have been subjected in Darfur, his mandate incorporated specific attention to human rights with a special focus on the rights of children and women. Established to support the AU and its political, military and police efforts to address the crisis in Darfur, *AMIS EU* comprises both a civilian and a military component.

The military element covers various types of assistance, such as providing planning and technical assistance, additional military observers and strategic and tactical transportation, and training a contingent of observers.²²⁰ The deployment of trainers and advisors will help the AU strengthen its civilian policing capacity.

By engaging in these actions, *EU AMIS* aims to support AMIS II in its endeavours to observe the cease-fire and to protect civilians and humanitarian operations. The civilian component provides police advisors, training of CIVPOL personnel, and support for the development of a police unit within the Secretariat of the AU.

According to an International Crisis Group report from 2005, EU officials acknowledged that the support by the EU to AMIS has entailed a steep learning curve for the EU as well as the AU, and that the results from the EU-AU relationship in Darfur "have been mixed, though generally positive".²²¹

The EU has stressed on several occasions the importance it attaches to human rights protection in the region, not only through the establishment of the Special Representative and his human rights brief but also through strong support of measures to punish human

²¹² See Mercado / Smitall (20 March 2006).

²¹³ See Gutiérrez (2006), 16–17.

²¹⁴ UN, MONUC, Human Rights Division: The Human Rights Situation in the Democratic Republic of Congo (DRC) Report, 27 July 2006, 2. The FARDC is the Forces Armées de la République Démocratique du Congo.

²¹⁵ International Crisis Group (2007), 4.

²¹⁶ International Crisis Group (2006), 19.

²¹⁷ See CJA 2005/355/CFSP.

²¹⁸ See Council Joint Action 2005/557/CFSP of 18 July 2005 on the European Union civilian-military supporting action to the African Union mission in the Darfur region of Sudan (CJA 2005/557/CFSP).

²¹⁹ See CJA 2005/556/CFSP.

²²⁰ See CJA 2005/557/CFSP.

²²¹ International Crisis Group (2005b), 13.

rights violations in the Darfur region. Even if this is not specifically mentioned in the mandate of *AMIS EU* – the Council Joint Action only refers in general terms to human rights of women and children – training of police officers and the development of a police unit can potentially contribute effectively to human rights protection.

AMIS EU has been extended for six months from 1 January 2007.²²²

3.4 Civilian Operations

Since January 2003 the EU has launched eleven civilian operations on three continents with tasks ranging from monitoring the implementation of a peace process to advice and assistance in police, border monitoring and rule of law sectors.

3.4.1 Police Operations

3.4.1.1 EUPM

The promotion of human rights is a major theme for conflict prevention and post-conflict situations and runs through every police mission. The very first ESDP crisis management operation, the EU Police Mission in Bosnia and Herzegovina (*EUPM*), was launched in January 2003.²²³ With 500 international civilian police officers it followed on from the UN's International Police Task Force (IPTF) established under the Paris/Dayton Agreement in 1995.²²⁴ When the initial mandate of three years (*EUPM I*) expired at the end of 2005, the EU agreed to a refocused mandate for a scaled-down *EUPM* (*EUPM II*).²²⁵

The mandate of *EUPM I* focused on enhancing BiH state-level security institutions and developing middle and senior level management within these. Aiming to address the whole range of rule of law aspects, *EUPM*'s priorities were return of refugees, the development of police independence and accountability, security, combating organised crime, and institution- and capacity-building at management level.²²⁶ These objectives were pursued through the following programme areas: criminal policing, criminal justice, international affairs, police administration, public order and security, State Border Service and State Information and Protection Agency.²²⁷ However, *EUPM* has been heavily criticised for having a weak and premature mandate and lacking effectiveness.²²⁸ The International Crisis Group (ICG) argued in 2005 that "no matter what criteria are used to assess *EUPM* performance, the indicators are depressing".²²⁹ According to Susan E. Penksa some police officers had at the beginning been sent to BiH without any pre-deployment training while all officers were sent into the field without implementation guidelines or assessment protocols.²³⁰ Many officers sent to *EUPM* were under-qualified and lacked competence and sufficient English language skills,²³¹ while there was also a lack of standard operating procedures, particularly with reporting structures.²³² According to a report by the ICG, the Bosnian police regarded the *EUPM* as "a laughing stock".²³³ In 2005 extremely counterproductive tension arose between *EUFOR Althea* and *EUPM I* and risked undermining the credibility of both missions in the eyes of the local population. *EUPM* had clearly acquired a negative reputation among the Bosnian population.²³⁴ The tension was triggered because *EUPM I* officials were advised to increase their trust of the local police and transfer more authority to them, whereas *EUFOR* officers were told exactly the opposite.²³⁵ This illustrates the lack of coherence between the mandates of the two operations and the working procedures of *EUFOR* and *EUPM*. Sure-

²²² See Council of the EU, Council Conclusion on Sudan, 2776th External Relations Council Meeting, Brussels, 22 January 2007, 6.

²²³ See *EUPM* website online at www.eupm.org.

²²⁴ See Council Decision 2002/845/CFSP of 30 September 2002 concerning the conclusion of the Agreement between the EU and BiH on the activities of the EU Police Mission (*EUPM*) in BiH (CD 2002/845/CFSP).

²²⁵ See CEU 15891/05.

²²⁶ See Letter dated 2 February 2005 from the Secretary General addressed to the President of the Security Council (Report on the activities of the EU Police Mission in BiH covering the period from 1 July to 31 December 2004), (S/2005/66).

²²⁷ See Penksa (2006), 4.

²²⁸ See International Crisis Group (2005), 12–14; Penksa (2006), 6; International Crisis Group (2005a), 51.

²²⁹ International Crisis Group (2005), 12.

²³⁰ See Penksa (2006), 6, 10, 11.

²³¹ See International Crisis Group (2005), 12–13.

²³² See Penksa (2006), 6, 10, 11.

²³³ International Crisis Group (2005), 12.

²³⁴ See International Crisis Group (2005), 14.

²³⁵ See Penksa (2006), 12.

ly, Penksa says, "many of the planning mistakes and delays experienced in *EUPM I* were simply part of the EU learning curve in designing, planning and running a large police mission".²³⁶

Nevertheless *EUPM I* has also made some important contributions by establishing a credible court police force and a crime-stoppers hotline, and assisting in preventing human trafficking. (The study by Batt and Valenius on gender mainstreaming in the missions in BiH observes, however, that "gender-specific issues such as human trafficking, sexual and domestic violence are not considered important enough issues to be tackled in the context of security" and criticises that local women's groups were not consulted sufficiently.²³⁷ The Council drew the consequences and has re-adjusted the policy of the mission.)

The mission engaged in Returnee Forums (information and service points for returnees) and furthered the development of state-level agencies such as the Ministry of Security and the State Border Service.²³⁸ Furthermore, its help in enhancing the institutionalisation of the BiH State Investigation and Protection Agency (SIPA) as a police agency to fight organised crime was of enormous importance.²³⁹

Moreover, the lessons learnt from the *EUPM I* experience seem to have been taken into consideration in the current *EUPM II*. For this new phase of *EUPM* the OPlan has been revised and the mandate renegotiated. It became operational in 2006 and now focuses on supporting the local police in the fight against organised crime, conducting inspections and monitoring of police operations and supporting the implementation of police restructuring.²⁴⁰ In 2005 *EUPM*, *EUFOR* and the EUSR for BiH agreed on a number of principles to further their cooperation before a set of common Operational Guidelines for *EUPM-EUFOR* support for the fight against organised crime was adopted in 2006 to adjust the roles of both missions.²⁴¹

In *EUPM*'s mandate the abovementioned responsibilities are not explicitly connected to human rights. Many of *EUPM*'s tasks do however represent – at the very least – important steps to prepare the ground for a human rights culture: capacity- and institution-building in the field of policing and rule of law, and the protection of refugees. The mission monitors and advises on all aspects of policing activities, the most important of which include human trafficking, and supervises the establishment of local police recruitment. Concerning the importance of human rights within the mission's work, Javier Solana, the High Representative of the CFSP, clarified in a letter of 3 December 2002 to Amnesty International, that:

"A professional, European police service is one that incorporates a human rights-based approach into all aspects of its work. In order to do this, the police service must reflect those standards in its own structures and practices. [...] For this reason, we will mainstream a human rights-based approach in our work. All *EUPM* colocators will be required to include human rights reporting in their reports from the field. In addition, *EUPM* will appoint one of its Legal Advisors, based in the Headquarters in Sarajevo, as the focal point for human rights issues".²⁴²

EU Council officials accordingly stated that human rights are to be mainstreamed into the mission's entire plan of work, and that in the *EUPM*'s vision "every police officer is a human rights officer".²⁴³

3.4.1.2 EUPOL Proxima

The EU's second police mission under ESDP, *EUPOL Proxima*,²⁴⁴ was deployed to Macedonia at the invitation of President Trajkovski – initially from 15 December 2003 to 15 December 2004,²⁴⁵ but later extended for an additional year.²⁴⁶ In line with the objectives of the EU-brokered Ohrid Framework Agreement signed on 13 August 2001, *Proxima* focused on the gradual stabi-

²³⁶ Penksa (2006), 6.

²³⁷ Batt/Valenius (2006), 12.

²³⁸ See Penksa (2006), 4.

²³⁹ See International Crisis Group (2005a), 50.

²⁴⁰ See Penksa (2006), 15.

²⁴¹ See Penksa (2006), 21.

²⁴² Solana (2002), 1.

²⁴³ Amnesty International (2003), AI Index: EUR 63/001/2003.

²⁴⁴ *Proxima* deployed a team of approximately 200 personnel.

²⁴⁵ Council Joint Action 2003/681/CFSP of 29 September 2003 on the European Union Police Mission in the Former Yugoslav Republic of Macedonia (*EUPOL 'Proxima'*) (CJA 2003/681/CFSP).

²⁴⁶ Council Joint Action 2004/789/CFSP of 22 November 2004 on the extension of the European Union Police Mission in the Former Yugoslav Republic of Macedonia (*EUPOL PROXIMA*) (CJA 2004/789/CFSP).

lisation of the country. The operation, which did not have an executive mandate,²⁴⁷ had an extremely short planning period that did not allow the elaboration of a well-defined mandate. The latter thus developed into a broad one covering monitoring and advice concerning all functions in the uniformed, criminal and border police, the Department of State Security and Counter-Intelligence, and internal control. It was run to monitor and advise the Macedonian police force, and thereby support the development of a professional police service, to assist the practical implementation of the reform of the Ministry of Interior and the operational transition towards a border police.

According to Brigadier General Jürgen Scholz, former Head of Mission, *Proxima* had a strong human rights focus (not mentioned in the mission's mandate) which embraced the human rights tasks of monitoring and capacity-building.²⁴⁸ In line with its mandate to work "within a broader rule of law perspective" so-called Law Enforcement Monitors were deployed – lawyers who were, on the one hand, concerned with improving cooperation between all bodies in the criminal justice system and, on the other hand, with monitoring the "internal control" unit. So as to enhance public confidence in the police, one task of the monitors who worked closely together with the police officers was, for instance, to assist Internal Control co-locators with the investigation of complaints concerning police misconduct and to monitor the investigations undertaken by the newly established Internal Control and Professional Standards Unit in the Ministry of Interior. The monitors' tasks thus encompassed the monitoring of concrete proceedings, e.g. all cases of investigations against police officers. Other activities directly linked to human rights included monitoring the treatment of detainees in police stations with subsequent reports to the government and international organisations.²⁴⁹ Being involved in the fight against human trafficking, *Proxima's* main objective in dealing with this matter was to raise awareness and improve skills in investi-

gating suspected cases. To this purpose workshops were held and handbooks for officers in the field were published.²⁵⁰ The handbooks also described the correct treatment of victims and initiatives for their support. Jürgen Scholz confirms that the human rights aspect found expression in the planning of the operations and in the work of the mission. Human rights knowledge was taken into consideration in selection of personnel and was included in the training. At the time when *Proxima* was deployed the EU presence in FYROM existed alongside various other international organisations and bilateral actors as is commonplace in peace support operations. One of the organisations *Proxima* worked together with was the OSCE, which was especially mandated to deal with human rights issues.

Although *Proxima* was confronted with enormous challenges at the beginning of its deployment, due to the complex environment in which it was placed and the numerous international actors already present, the former Head of Mission stresses that huge improvements were noticed within the work of the Macedonian police, although of course things remained to be done since more than two years are necessary for a complete reorientation of police methodology. This view was shared by the International Crisis Group, which stated in one of its reports that the police reform mandated by Ohrid had made notable progress;²⁵¹ *Proxima* "produced visible results" and was more successful than *EUPM* in Bosnia.²⁵²

3.4.1.3 EUPOL Kinshasa

Following an official request by the Congolese interim government and the UN to provide a framework for and advice to the Integrated Police Unit (IPU) under a Congolese line of command, the EU launched another civilian Police Mission, *EUPOL Kinshasa*, in the DRC in 2004.²⁵³ Initially the mission, involving a team of about 30 staff, accompanied the IPU nationwide and assisted it in reinforcing the country's internal security and contributing to ensuring the protection of the state institu-

²⁴⁷ Nevertheless, as is usual for such police missions without an executive mandate, *PROXIMA* had a 30-strong armed Protection Unit which was tasked to protect or evacuate *Proxima's* unarmed police in case of emergency. See Rummel (2005), 24.

²⁴⁸ This and the following information has been drawn from the e-mail interview with Jürgen Scholz on 24 April 2006.

²⁴⁹ See Internal Control/Law Enforcement Monitoring Programme, Factsheet, Skopje, *EUPOL Proxima*, June 2004; and Flessenkemper (2004), 10.

²⁵⁰ See Scholz (2005), 2.

²⁵¹ International Crisis Group (2006a), 1.

²⁵² International Crisis Group (2005a), 49. However, according to the report the judicial system remained unreformed and dysfunctional. See International Crisis Group (2006a), 1.

²⁵³ See CJA 2004/847/CFSP.

tions. It serves to monitor and advise the IPU to ensure that the IPU acts according to the training received in the Academic Centre and according to international best practice in the field. With respect to the IPU, which now works in a professional fashion, the *EUPOL Kinshasa* has had positive results.²⁵⁴ The training of the IPU encompasses human rights as a major element.²⁵⁵

Since the initial first year, the mission has been extended twice (until December 2006 and June 2007), while the mandate has been broadened in order for the mission to support the security of the Presidential elections in the DRC in June 2006.²⁵⁶ New tasks also involve coordination of the maintenance of law and order in Kinshasa, and reform of the Congolese National Police.²⁵⁷

The police in the DRC have benefited from the work of *EUPOL Kinshasa*. They are comparatively well trained, although the reputation of the police is still questionable owing to the fact that they are still heavily involved in corruption.²⁵⁸

While human rights are, again, not referred to in the mandate, it can be concluded from reports and official sources that human rights monitoring, institution-building and training are important elements of the mission. It is important to note that for *EUPOL Kinshasa* a human rights point of contact has been established.

3.4.1.4 EUPAT

The EU Police Advisory Team (*EUPAT*) in the Former Yugoslav Republic of Macedonia was established following the EU's decision – after the successful completion of *EUPOL Proxima* – to move from a crisis management mission to longer-term support and capacity-building for the Macedonian police. Its operational phase of six months began in December 2005. The civilian police

mission was launched to build a bridge between the end of *Proxima* and a planned monitoring project funded by CARDS.²⁵⁹ Thus the objective of *EUPAT* was to further support the development of a professional police service based on European standards within a broader rule of law perspective.²⁶⁰ The roughly 30 EU police experts thus mentored the country's police on priority issues in the field of border policing, public peace, order and accountability, and the fight against corruption and organised crime. Jürgen Scholz, the Head of Mission, confirmed that the mission was actively contributing to establishing a human rights culture,²⁶¹ even though the mandate did not explicitly raise human rights tasks. The International Crisis Group proposes the establishment of a new mission by drawing personnel and expertise from *Proxima* and its successor mission *EUPAT*.²⁶²

3.4.1.5 EUPOL COPPS

To support the Palestinian Authority in taking responsibility for law and order, and, in particular, in improving its civil police and law enforcement capacities the EU Coordinating Office for Palestinian Police Support Mission *EUPOL COPPS* began its operational phase in January 2006.²⁶³ It was established in January 2005 in the context of the endorsement of a short-term action programme on security, reforms, elections and the economy in the Palestinian Territories. *EUPOL COPPS* is not endowed with executive power, has duration of three years, and aims to "contribute to the establishment of sustainable and effective policing arrangements under Palestinian ownership in accordance with best international standards".²⁶⁴ In detail this involves assisting the Palestinian Civil Police (PCP) in the implementation of the Police Development Programme by advising and mentoring Palestinian officials at headquarters and district level, advising Palestinian authorities on police-related aspects of the criminal justice system and coordinating and facilitating international

²⁵⁴ See Gutiérrez (2006), 15.

²⁵⁵ See Bushoki (2006), 6.

²⁵⁶ See Council Joint Action 13774/05 of 16 November 2005, amending and extending Joint Action 2004/847/CFSP on the EU Police Mission in Kinshasa (DRC) regarding the integrated Police Unit (EUPOL "Kinshasa") (CJA 2005/13774/CFSP).

²⁵⁷ See Young (18 December 2006).

²⁵⁸ See Kinzel (2006), 3; Young (18 December 2006).

²⁵⁹ CARDS: European Commission's Community Assistance for Reconstruction, Development and Stabilisation Programme.

²⁶⁰ See Council Joint Action 2005/826/CFSP of 18 July 2005 on the establishment of an EU Police Advisory Team (EUPAT) in the Former Yugoslav Republic of Macedonia (FYROM)(CJA 2005/826/CFSP).

²⁶¹ E-Mail interview with Jürgen Scholz, 24 April 2006.

²⁶² International Crisis Group (2006a), 2.

²⁶³ See Council Joint Action 2005/797/CFSP of 18 Nov 2005 on the European Union Mission for the Palestinian Territories (CJA 2005/797/CFSP).

²⁶⁴ CJA 2005/797/CFSP.

assistance to the PCP.²⁶⁵ Being a small mission with a moderate budget *EUPOL COPPS* is only able to address the reform of a limited part of the Palestinian security forces.²⁶⁶ "It nevertheless signifies the EU's long term engagement in the area and could perform a crucial confidence building role".²⁶⁷

As stated in the joint action, *EUPOL COPPS* will cooperate with the Community's programmes for institution-building as well as other international efforts in the wider context of security sector reform. An assistance programme launched by the Commission is included within a broader proposal for a comprehensive, medium-term EU strategy for Palestinian support, presented by the European Commission to the Council and the European Parliament in October 2005.²⁶⁸ This strategy is built on the European Neighbourhood Policy Action Plan agreed between the EU and the PA in 2004.²⁶⁹

On account of the outcome of the Palestinian legislative elections of early 2006 the mission has scaled down its active involvement with the Palestinian Civil Police, although it keeps contacts at working level.²⁷⁰

While many official EU sources and statements suggest a general EU commitment to human rights activities in any police advice and support project,²⁷¹ once again human rights are not referred to in this mission's mandate. A stronger reference would assist the mission's difficult task of raising human rights standards in the Palestinian police forces.

3.4.2 Rule of Law Operations

Rule of law and human rights are inextricably intertwined. The establishment of the rule of law is a pre-condition for the implementation of human rights standards. Thus any mission which helps to (re)establish a system of rule of law in a country has a particular opportunity to contribute to the protection and promotion of human rights.

The EU's first Rule of Law Mission *EUJUST Themis*, in Georgia,²⁷² was established on 16 July 2004 for one year.²⁷³ In June 2004 the Georgian Prime Minister had invited the EU to assist his government by way of such an operation. The mission was "one of the numerous EU/EC instruments used in Georgia and at the time a test-case for future ESDP civilian operations".²⁷⁴ Twenty-eight staff were deployed to Georgia on the principle of "colocation", that is of sending international experts to work in top management positions in the institutions that form part of a justice system of a country undergoing transition or coming out of a conflict.²⁷⁵ In order to assist in guiding the reform of the criminal justice sector "towards international and European human rights standards by providing high level advice and also through monitoring and mentoring activities",²⁷⁶ experts were placed in the Georgian Ministry of Justice, the Court of Appeal, the Ministry of the Interior, the police academy and the general prosecutors' office, the Council of Justice and the public defence office.²⁷⁷ A number of recommendations elaborated with the assistance of *EUJUST Themis* have been implemented and helped Georgia on the way to judicial independence.²⁷⁸

²⁶⁵ See EU Council Secretariat, Factsheet EU Police Mission for the Palestinian Territories (EUPOL-COPPS), EUPOL-COPPS/02, 9 February 2006, online at: <http://www.consilium.europa.eu/uedocs/cmsUpload/051222-EUPOL-COPPS.pdf>.

²⁶⁶ €6.1m for 2006: See Pirozzi 2006, 4.

²⁶⁷ Pirozzi (2006), 4.

²⁶⁸ See Communication from the Commission to the Council and the European Parliament, EU-Palestinian cooperation beyond disengagement – towards a two-state solution. Brussels, 5 October 2005, COM (2005) 458 final.

²⁶⁹ Pirozzi (2006), 4.

²⁷⁰ See Council of the EU, 16696/06, Presidency Report on ESDP, Brussels 12 December 2006 (CEU 16696/06).

²⁷¹ See footnote 240.

²⁷² The OSCE is undertaking a proper human rights mission in Georgia in order to promote international human rights standards, see the mission website on <http://www.osce.org/georgia/16294.html>.

²⁷³ See Council Joint Action 2004/523/CFSP of 28 June 2004 on the European Union Rule of Law Mission in Georgia, *EUJUST Themis* (CJA 2004/523/CFSP). In the end the mission lasted only seven instead of the envisaged twelve months. See Lobjakas (2005).

²⁷⁴ Helly (2006), 101.

²⁷⁵ The European Commission made available €4.65 million under its Rapid Reaction Mechanism (RRM) for measures to reinforce the rule of law and democratic processes in Georgia. The RRM was complementary to other projects such as *EUJUST Themis*. See Helly (2006), 94.

²⁷⁶ Council of the EU, 11565/04, EU Rule of Law Mission to Georgia in the context of ESDP, *EUJUST Themis* – Updated Public Master Messages, Brussels 16 July 2004 (CEU 11565/04).

²⁷⁷ See Speech by Sylvie Pantz (Former Head of the *EUJUST Themis* Mission in Georgia) on Police, Rule of Law, Monitoring and Security Sector Reform missions under ESDP, 9 October 2006.

²⁷⁸ See Di Puppo (2006).

But Sylvie Pantz, the former Head of Mission, also stated in 2005 after the mission had closed that she "does not expect any immediate results from the work of the mission".²⁷⁹ She described the country as unstable and argued that there was no guarantee that the government would continue implementing the reform.²⁸⁰ In order to ensure that the completed mission was followed up, two rule-of-law experts were added to the support team for the EUSR for the South Caucasus region on border monitoring,²⁸¹ and two Themis experts were deployed in Tbilisi to accompany the planning of the implementation process.²⁸²

Overall Sylvie Pantz concluded that in her view the EU's rule of law missions are excellent instruments for countries coming out of crisis to reform their criminal justice system.²⁸³ However, Pantz also described a series of lessons that had been learnt from *EUJUST Themis* – ranging requirements for communication and coordination skills and substantial knowledge of the country and its legal system to the need to ensure ownership by the local partners.

As well as these lessons, it has been observed that although the Joint Action was clearly defined, the mission's mandate was not flexible enough to accommodate unexpected situations and was too ambitious for a one year deployment.²⁸⁴ Whether *EUJUST Themis* can be considered a successful undertaking will depend on the way the reform of the judicial system is eventually implemented in Georgia.

After the Brussels European Council on 5 November 2004 had recognised the importance of strengthening the criminal justice system in Iraq in compliance with respect

for human rights,²⁸⁵ the Union launched the Integrated Rule of Law Mission in Iraq *EUJUST LEX*, on 1 July 2005. The mission is mandated to provide training for high- and mid-level officials in senior management and criminal investigation to improve the capacity of the different components of the Iraqi criminal justice system.²⁸⁶ It aims to "improve skills and procedures in criminal investigation in full respect for the rule of law and human rights".²⁸⁷ The programme thus includes "sound training on the respect of human rights".²⁸⁸

So far more than 800 Iraqi magistrates, senior policemen and prison officers have been trained in an integrated fashion in EU member states.²⁸⁹ Human rights represent an imperative aspect in the mandate of this mission. Capacity-building in this field and human rights education are the essence of the operation. Nonetheless, measured against the scale of the need, the impact of *EUJUST LEX* remains uncertain, as the Iraqi criminal justice system needs to be completely reconstructed. The EU actions are certainly essential; they are however neither sufficient nor sustainable.²⁹⁰ Despite the fact that the Joint Action maintains that other long-term Community programmes will follow, it remains unclear how the short-term *EUJUST LEX* mission will be connected to longer-term efforts to rebuild the Iraqi legal system in order to contribute to the protection of human rights in an exceptionally difficult security and political situation.

According to Michael Matthiessen, former Personal Representative of the SG/HR on Human Rights in the area of CFSP, a human rights point of contact has recently been established for *EUJUST LEX*. The mission mandate has been extended until December 2007.

²⁷⁹ Lobjakas (2005).

²⁸⁰ See Lobjakas (2005).

²⁸¹ See Council of the EU, 9342/05, Proposals by the EUSR to the South Caucasus and the Head of Mission of *EUJUST Themis* on how the goals and objectives of *EUJUST Themis* should be furthered after the missions mandate expires. Brussels 26 May 2005 (CEU 9342/05).

²⁸² See Council Joint Action 2005/582 of July 2005 amending and extending the mandate of the European Union Special Representative for the South Caucasus (CJA 2005/582).

²⁸³ See Lobjakas (2005).

²⁸⁴ See Helly (2006), 99.

²⁸⁵ See European Council 4/5 November 2004, Presidency Conclusions 14292/1/04/Rev 1. Brussels, 8 December 2004 (CEU/CONCL3 14292/1/04 Rev 1), 46.

²⁸⁶ That is, the police, court and prison systems. See Council Joint Action 2005/190/CFSP of 7 March 2005 on the European Union Integrated Rule of Law Mission for Iraq (CJA 2005/190/CFSP).

²⁸⁷ CJA 2005/190/CFSP.

²⁸⁸ AKI (15 June 2005).

²⁸⁹ See Council of the EU, 16696/06, Presidency Report on ESDP. Brussels, 12 December 2006 (CEU 16696/06). The training of the officials takes place outside of Iraq. Once the training programme has been completed 50–60 per cent of the Iraqi professionals working as magistrates, senior policemen or prison officers will have been reached. See AKI (15 June 2005).

²⁹⁰ See Rummel (2006), 20.

3.4.3 Border Assistance Missions

The EU's first border assistance operation, the Mission at Rafah Crossing Point on the Gaza-Egypt border, *EU BAM Rafah*, was deployed on 25 November 2005.²⁹¹ The border point was opened to improve the economic prospects of the Palestinian people and to allow them to move more freely. The operation, which was originally intended to last 12 months, was launched to actively monitor and evaluate the Palestinian Authority's performance with regard to the implementation of the Framework, Security and Customs Agreements concluded between the parties on the operation of the Rafah terminal. Furthermore it will contribute to building up the Palestinian capacity in all aspects of border management at Rafah.²⁹² The work at the Rafah crossing point has improved tremendously since the deployment of the EU team.²⁹³ The former Head of Mission, Pascal Schumacher, pointed out that for the mission personnel it was not clear what kind of international standards they should work with and where these standards are defined. *EU BAM* tried to work with the Schengen standards.²⁹⁴ However, these were developed to deal with the EU area, not the Middle East, which raised problems on how to apply them there.²⁹⁵

In February 2006 Nicoletta Pirozzi from Isis Europe stated "for the time being, *EU BAM Rafah* can be considered a success".²⁹⁶ As the Rafah border crossing is the only way out of Gaza to Egypt Palestinians were pleased with the stabilisation of Rafah, "if only because they (we)re passing freely through a border they can call their own", the *Toronto Star* reported in May 2006. The newspaper quotes the Palestinian Haithem Shakreet: "I am happy to see this crossing under proper security control." "Even with things as bad as they are, this is something new for us. When Israelis controlled Rafah, you could spend three or four days sitting on one side, waiting for the border to open. Now, even though the security checks

are very tight, you can be confident you will get through in a single day."

Due to the deterioration of the situation in Gaza in June 2006, the terminal has been open only sporadically, and the number of people passing through the border crossing has fallen dramatically since then.²⁹⁷ So a number of factors will determine whether the mission at Rafah will ultimately prove a success.

While the mandate does not refer specifically to human rights, the contribution of the mission to a legally functioning border certainly contributes to the freedom of movement of Gaza's inhabitants, a basic human right enshrined in the ICCPR. The mission's mandate was extended for 6 months on 13 November 2006.²⁹⁸

The EU Border Assistance Mission to Moldova and Ukraine (*EU BAM*) was established by the EU in November 2005 at the joint request of the presidents of Moldova and Ukraine, who called for additional EU support in overall capacity-building for border management, including customs, on the whole Moldova-Ukraine border.

For two years 69 international experts and 50 local staff will help to prevent smuggling, trafficking and customs fraud through advice and training to improve the border service.²⁹⁹ The aim is to build confidence and strengthen cross-border co-operation and establish a system of customs controls and border surveillance which meets European standards. The mission aims to reduce illicit cross-border flows, including of weapons, drugs and trafficked human beings. The Mission is an advisory, technical body, and thus, like the other assistance missions, has no executive powers.³⁰⁰ The mandate of the mission does not refer to human rights. Both Moldova and Ukraine are part of the European Neighbourhood Policy, and the human rights impact of the mission needs to be evaluated in detail – the efforts to

²⁹¹ On 15 November 2005 Israel and the Palestinian Authority concluded an "Agreement on Movement and Access". On 21 November 2005 the Council of the EU agreed that the EU should undertake the Third Party role proposed in the Agreement.

²⁹² See Council Joint Action 2005/889/CFSP of 12 December 2005 on establishing a European Union Border Assistance Mission for the Rafah Crossing Point (*EU BAM Rafah*) (CJA 2005/889/CFSP).

²⁹³ See Potter (2006), 1.

²⁹⁴ Schengen Acquis, especially rules relating to external border control and cross-border police cooperation.

²⁹⁵ See Speech by Pascal Schumacher (Former Head of Operations, *EU BAM Rafah*, Palestine) on Police, Rule of Law, Monitoring and Security Sector Reform missions under ESDP, 9 October 2006.

²⁹⁶ Pirozzi, (2006), 2.

²⁹⁷ See CEU 16696/06.

²⁹⁸ See Press Release 14781/06, Council of the EU, Council Conclusions, General Affairs and External Relations, 2761. Council Meeting. Brussels, 13 November 2006.

²⁹⁹ See EU Factsheet EU Border Assistance Mission to Moldova and Ukraine, online at: http://www.consilium.europa.eu/uedocs/cmsUpload/051220-Factsheet_BM_Moldova_Ukraine.pdf.

³⁰⁰ See Mission website, online at: <http://www.eubam.org/>.

combat trafficking may represent a real contribution to the protection of human rights of trafficked women, but the question arises why a mission dealing with migration issues does not have a human and refugee rights component.

3.4.4 The EU's Monitoring Mission AMM

The EU Monitoring Mission in Aceh/Indonesia (*AMM*),³⁰¹ established in September 2005,³⁰² was the first real ESDP monitoring operation, and the first ever EU operation in Asia. According to Amnesty International the *AMM* was a "historic opportunity to ensure that violations of human rights and humanitarian law in the province are brought to an end".³⁰³ The mission's activities have paved the way to sustainable peace in Aceh, where a peace agreement was announced on 17 July 2005 between the government of Indonesia and the GAM,³⁰⁴ and a Memorandum of Understanding (MoU) formally signed on 15 August.³⁰⁵ The only lead actor for monitoring implementation of the MoU that both parties would accept was the EU, which subsequently set up *AMM* at the request of both parties. The mission, conducted in co-operation with five ASEAN countries,³⁰⁶ was initially due to expire after six months on 15 March 2006, but was extended until mid-December.³⁰⁷ According to the International Crisis Group, a large part of the population of Aceh was happy to see the *AMM* extended due to its generally strong performance.³⁰⁸

The objective of *AMM* was to assist the government of Indonesia and the GAM in their implementation of the MoU. Under the terms of the MoU *AMM* was tasked with monitoring the human rights situation and providing assistance in this field. Monitoring focused on the demobilisation of GAM, on decommissioning and on

the reintegration of active GAM members. The *AMM* monitored the re-location of non-organic military forces and police troops and the process of legislative change which encompassed the review of the legal code for Aceh and the setting up of an independent court system, including a court of appeals. Furthermore, the mission had the duty to rule on disputed amnesty cases, and dealt with alleged violations of the MoU.³⁰⁹ The monitoring of human rights violations was, however, limited to violations that took place after the adoption of the MoU on 15 August 2005.³¹⁰ So *AMM* was not mandated to delve into the past and past violations of human rights. In this respect the EU has been criticised for not including transitional justice in *AMM*'s mandate.³¹¹

A further objective lay in the strengthening of civil society groups and national institutions in the field of human rights with the intention of facilitating the implementation of civil and political as well as economic, social and cultural rights. Their implementation was, according to Pieter Feith, Head of *AMM*, directly related "to the reintegration effort and the future of Aceh".³¹²

The mission thus explicitly had human rights in its mandate in the sense of a monitoring function.³¹³ Human rights are also mentioned in the MoU in Article 5.2d as the basis of the Law on Governing Aceh, in Article 2 on human rights, and Article 4.12 on special training with an emphasis on human rights for organic police. It is significant that according to the MoU the government of Indonesia agreed to adhere to the UNICCPR and ICESCR.³¹⁴ The MoU made it a condition that Indonesia had to sign the ICCPR and ICESCR, which was a significant and innovative move that could be used as an example for other missions. As flanking measures to secure human rights protection and the rule of law in the long term, the EU Commission supports the estab-

³⁰¹ The EU Concept for Monitoring Missions was endorsed by the PSC on 27 May 2003 (EU 14536/03), according to which monitoring missions are generic tools that could be used in all phases of civilian crisis management.

³⁰² See Council Joint Action 2005/643/CFSP of 9 September 2005 on the European Union Monitoring Mission in the Aceh (Indonesia) (CJA 2005/643/CFSP).

³⁰³ Amnesty International (2005), AI Index: ASA 21/017/2005.

³⁰⁴ GAM stands for Gerakan Aceh Merdeka – Free Aceh Movement.

³⁰⁵ The MoU can be found online at: <http://www.aceh-mm.org/download/english/Helsinki%20MoU.pdf>. It established a framework for confidence-building and sustainable peace, which covers e.g. governance, political participation, rule of law, human rights, reintegration of GAM members, monitoring and dispute resolution. For an in-depth discussion on the conflict in Aceh see Braud/Grevi (2005), 4.

³⁰⁶ Brunei, Malaysia, the Philippines, Singapore and Thailand.

³⁰⁷ See Aceh Monitoring Mission website: http://www.aceh-mm.org/english/info_menu/archive.htm.

³⁰⁸ See International Crisis Group (2005c), 7.

³⁰⁹ See CJA 2005/643/CFSP.

³¹⁰ See CJA 2005/643/CFSP.

³¹¹ See e.g. 8th EU NGO Forum on Human Rights, Mainstreaming Human Rights and Democracy in European Union Policies, Helsinki, 7–8 December 2006, Recommendations by Workshops, online at: http://www.protectiononline.org/IMG/doc/Recommendations_final.doc.

³¹² Feith (2006), 3.

lishment of the Human Rights Court and a Commission for Truth and Reconciliation for Aceh.³¹⁵ It is also noteworthy that subsequent to signing of the MoU and prior to launching the mission in Aceh the SG/HR Personal Representative for Human Rights was consulted to give advice on the human rights aspects of the mission, the first time this has been done in an ESDP operations.³¹⁶ It was also the very first time that the EU has sent human rights monitors in the context of a crisis management operation, and the first time that such a mission had a deputy head of mission for amnesty, reintegration & human rights.³¹⁷ In general, the execution of human rights tasks was coordinated by a human rights coordinator. But the mission also had a reintegration advisor and reintegration officer to coordinate reintegration issues, which fall mostly under economic, social, and cultural rights.³¹⁸ Referring to all these newly introduced measures, Pieter Feith said that "AMM is breaking new ground for future ESDP missions and we like to think it will change the way the EU conducts crisis management operations".³¹⁹ We can only speculate whether this change will actually occur, but that the way in which the AMM mission was conducted was successful has been confirmed a number of times. The Acehnese themselves, as reported by the International Crisis Group, believe that the EU Mission in Aceh has played an important role in reinforcing peace.³²⁰ They are impressed "with AMM's achievements in building dialogue between government representatives and those they were fighting 18 months ago", said Lucy Williamson from the BBC in Jakarta in December 2006.³²¹

As regards the mission's success in improving the human rights situation, the former Spokesperson for AMM, stressed:

"Although human rights are not to be measured easily in quantity or even quality-protection, promotion and promulgation can be monitored. In the specific case of Aceh we have seen a drastic improvement of human rights practice from the onset of the peace process".³²²

This extremely encouraging evaluation of AMM will unquestionably strengthen the former HR/SG Personal Representative's view that future crisis management operations should include: "human rights related aspects from the very beginning, and where appropriate also as part of preparatory fact finding missions, to ensure that human rights issues are adequately covered and addressed during and following such operations".³²³

3.4.5 Missions to Come – Kosovo and Afghanistan

On 10 April 2006 the EU decided to place a planning team in Kosovo (*EUPK Kosovo*) aiming at preparing for a new ESDP mission in Kosovo and ensuring a smooth transition between this possible EU crisis management operation in the field of rule of law and other areas and selected tasks of the United Nations Interim Administration Mission in Kosovo (UNMIK). The Council decided in December 2006 to reinforce and extend the planning team's mandate until May 2007.³²⁴ After a request by NATO Secretary-General Jaap de Hoop Scheffer for the EU to build up the police force in Afghanistan, the EU recently sent a fact-finding mission to Afghanistan in order to examine the conditions for a potential civilian ESDP mission in the field of policing with linkages to the wider rule of law. EU Foreign Ministers will now consider options for the future of the overall EU engagement, taking into account the mission's findings. Given the notorious human rights record in both crisis regions, both missions would certainly benefit from a strong human rights mandate.

3.5 Human Rights Components within EU Operations – Summing Up

To sum up, since the Göteborg European Council, the EU has successfully launched 16 operations: three military ones (*Concordia*, *Althea*, *Artemis*) plus the most

³¹⁵ See Hazelzet (2006), 571.

³¹⁶ See CEU 11678/1/05 Rev 1.

³¹⁷ See Hazelzet (2006), 571. Of the total of 219 unarmed staff composing the mission, there are about 40 human rights monitors. The military background of a number of monitors enables them to supervise the decommissioning and destruction of weapons. See <http://www.aceh-mm.org/>.

³¹⁸ All the information is drawn from the e-mail interview with the former spokesman of AMM, (AMM, 9 June 2006).

³¹⁹ Feith (2006), 5.

³²⁰ See International Crisis Group (2006b), 8.

³²¹ BBC News (15 December 2005).

³²² E-mail interview with the former spokesman of the AMM mission (AMM, 9 June 2006).

³²³ CEU 11678/1/05 REV 1.

³²⁴ See Council of the European Union, 16696/06, Presidency Report on ESDP. Brussels 12 December 2006 (CEU 16696/06).

recent one in Kinshasa (*EUFOR DRC*), one Security Sector Reform Mission (*EUSEC DRC*), five Police operations (*EUPM*, *Proxima*, *EUPOL Kinshasa*, *EUPOL COPPS*, *EUPAT*), two Rule of Law Missions (*EUJUST Themis*, *EUJUST LEX*), an Action to support the African Union's efforts in Darfur, two Border Assistance Missions (*EU BAM Rafah*, *EU BAM Ukraine Et Moldova*) and one Monitoring Mission (*AMM*).

The Union's military operations have certainly been able to contribute to creating a more secure environment in crisis regions which is a pre-condition to human rights protection and to prevent further violations – be it through the deterring effect of an international presence, by effective measures to put an end to impunity of perpetrators of human rights violations, or by stabilisation of the security situation, training of security forces and protection of the civil population. The *EUSEC DR Congo* mandate explicitly mentions that policies shall be promoted compatible with and mission tasks be carried out in full respect for human rights.

Regarding the civilian operations, only two of them – *EUJUST Lex* and the *Aceh Monitoring Mission* – were explicitly mandated to carry out human rights tasks. However, both rule of law missions and nearly all police missions paid great attention to human rights protection. *Proxima* included a strong human rights component in the form of the Law Enforcement Monitors, even if they were not mentioned in the mandate, and *EUPOL Kinshasa* included human rights training as one of the major elements of police education.

Most of the human rights activities in ESDP crisis management operations are short-term or flanking measures to secure human rights protection and the rule of law, since most EU operations are rather short-term instruments which cannot provide lasting solutions. The human rights aspects within the missions and the entire operations may, however, contribute to stability for sustainable conflict prevention work to take root, particularly if embedded in a long-term strategy involving other civilian actors including those employed by the European Commission.

4 Conclusions and Recommendations

4.1 Conclusions

Development of a human rights policy within ESDP is still comparatively young. The enhancement of human rights and gender mainstreaming and the improvement of training and evaluation procedures for ESDP operations are work in progress. Respect for human rights, which is a substantial objective of the CFSP and an expression of the commitment of EU member states to the normative foundations of the EU has by now entered into many key documents on the ESDP.³²⁵ Almost all of these incorporate references to human rights, but in practice, as the survey of missions in chapter 3 shows, human rights have only been included to a limited extent. It seems that efforts to enhance human rights in the sphere of ESDP missions are increasing, though. Human rights and gender advisors have become part of some missions. Human rights experts have opened discussions with the civil-military cell and the military staff on how to include human rights aspects in future operations, and the integration of human rights education into training of mission personnel is being discussed. An explicit and systematic approach to human rights as an aim within the framework of ESDP, however, cannot yet be identified. The human rights mainstreaming guidelines have to be put into practice now, and truly become a central guiding principle since human rights are a decisive factor in sustainable conflict resolution and lasting and genuine peace.³²⁶

4.2 Recommendations

1. Human Rights as a Strategic Element in the Design of Crisis Response

With civilian aspects of ESDP the EU has at its disposal a range of instruments it could use for designing proactively civilian intervention since these tools have their own, underused potential for crisis response.³²⁷ "Today's human rights violations are the causes of tomorrow's conflicts," as the former High Commissioner for Human Rights, Mary Robinson, said. Thus, it needs to be ensured that all missions are embedded in a longer-term conflict prevention strategy, including human rights protection as a paramount instrument for non-violent conflict resolution.

The EU has not yet entered into the field of multidimensional peace operations but, as the overview in chapter 3 shows, has chosen an approach of identifying strategic entry points for intervention, protection and assistance in peace missions.³²⁸ Many EU missions take place in an environment where many actors take over specific tasks, with diverging degrees of coordination and cooperation. But, whatever the EU decides its own contribution within a crisis region should be, human rights and a special awareness of women's rights, children's rights and the rights of groups in vulnerable situations should be a key factor in the situation assessment, and protection and promotion of human rights should be a key objective of the mandate and the strategic design of a mission. The assessment of the most appropriate tool may result in the establishment of a larger human rights component of a mission,³²⁹ or, at least, the integration of advisors on hu-

³²⁵ See chapter 1.3.

³²⁶ See chapter 1.3.2.

³²⁷ Reinhard Rummel argues in this direction. See Rummel (2006).

³²⁸ Multidimensional peace operations include a range of military and civil tasks such as the observation of cease-fire agreements, police tasks, election observation, human rights monitoring and institution-building.

³²⁹ In the sense of a substantial field presence of human rights field officers undertaking a range of tasks as explained in chapter 2.3.

man rights and/or gender. It may also result in a mainstreaming policy for the mission, mirrored in the composition of mission staff, in training for military and civilian staff and in the mandate and objectives of the mission.

Recommendation: The EU should stress the civilian aspect of ESDP missions and use its potential for a proactive design of civilian intervention. Civilian operations offer a range of valuable tools for sending a strong political message of EU support for human rights and peace.

The EU's situation assessments of crisis situations where a civil and/or military intervention is envisaged should include a human rights analysis of the region. Mandate and design of the missions should explicitly incorporate human rights protection and promotion in a crisis region as a key objective for a lasting and sustainable impact of a mission for peace and security.

2. Human Rights Components of EU Missions and Mandates

Human rights components of EU missions should be endowed with a clear and strong mandate. The actual formulation of human rights tasks in the mandates is essential for the success of these tasks involving human rights components that may range from observing human rights violations by conflicting parties and the corresponding reporting, initiating or monitoring criminal proceedings to the setting up of human rights institutions. The mandate should relate to the relevant human rights framework of the mission, in particular relevant national law and international and regional human rights treaties ratified by the host country. Effective human rights monitoring and serious investigation of accusations also requires contact points for the civilian population, provision of sufficient resources in terms of trained personnel, and a reporting cycle that allows observations to be channelled into investigations (and criminal proceedings where appropriate) but also into the setting up of human rights institutions.

Recommendation: Human rights components within EU missions should be based on a strong and comprehensive mandate, which should establish clear reporting lines for mission personnel to report observations of human rights violations by the conflicting parties. The mandates should furthermore clearly state the range of tasks and responsibilities of the mission's human rights component, such as human rights monitoring and re-

porting, conduct of investigations, institution building and capacity-building. Mission staff has to be appropriately trained for these specialised tasks. The EU should, in addition, provide access for the local population and ensure that legal or institutional consequences are drawn from observations and reports.

3. Human Rights Advisors

The establishment of Human Rights Focal Points (as part of a brief e.g. of the legal advisor) in various missions and the intention to appoint (full time) Human Rights Advisors in EU missions are excellent developments. Now that the first human rights posts have been established in a number of missions these efforts will contribute to deepened human rights awareness in EU missions.

Recommendation: Every mission should include a gender-sensitive full-time Human Rights Advisor at headquarters on the ground. As mentioned before, mandates should clearly state the range of tasks of the human rights advisors. The advisors should be adequately resourced. They must be given appropriate competences in order to integrate a human rights perspective into the full range of ESDP activities. Adequate reporting lines should ensure that the advisor has access to the head of mission and a specialised human rights unit (within the EU or at UN level). Special attention should be paid to women's rights especially where the mission does not have a Gender Advisor. Responsibilities and activities should include:

- Coordination and monitoring of human rights mainstreaming implementation in the mission
- Collection of information on human rights aspects of the local situation, reporting about the situation
- Advice to the head of mission on human rights aspects of their work
- Arrangement of regular meetings with local human rights NGOs and the national human rights institution
- Cooperation with other international actors in the field on human rights issues (e.g. OSCE, UN, Council of Europe)
- Provision of a permanent contact point for the local population in terms of all issues regarding human rights. The local population should be informed about the role of the human rights advisor.

All mission personnel should be informed about the functions of the human rights advisors.

4. Gender Units

It is generally recognised that conflict affects women and men differently. Each group has gender-specific needs during and after conflict. Greater efforts should now be made to implement the resolutions and guidelines on gender mainstreaming, and to include the differentiated gender perspectives of women, girls, men and boys into mission practices in order to ensure or at least make it more likely that fundamental human rights will be upheld.

Resolutions and documents such as UN Resolution 1325 and the "Council Conclusions on promoting gender equality and gender mainstreaming in crisis management" affirm that a gender perspective should be fully integrated in the planning and conduct of all ESDP missions and operations. The appointment of the first Gender Advisor to an EU operation (*EUFOR RD Congo*) is a very good development. However, as the gender audit of the EU missions in Bosnia-Herzegovina has indicated, the interests of women in mission areas have been largely overlooked and thus an enormous amount of work still needs to be done.

Most countries of the world have ratified the UN Convention on the Elimination of All Forms of Discrimination against Women. A Gender Unit should promote the implementation of the convention in the host country of the mission including, where appropriate, of special measures "aimed at accelerating the *de facto* equality between men and women" according to Art. 4.1 of the convention.

Recommendation: The "Council Conclusions on promoting gender equality and gender mainstreaming in crisis management", the "Guidelines on the Protection of Civilians" and the "Generic Standards of Behaviour", and, *inter alia*, their regulations against sexual exploitation and prostitution, should be fully implemented by all ESDP missions. A gender perspective should be integrated already in the fact finding and the preparatory work of the missions. A Gender Advisor or, at the very least, a Focal Point for gender issues should be established for all missions, with an adequate counterpart in Brussels. It should be made clear to the local population as well as all mission personnel that either the respective Human Rights Advisor or a Gender Advisor specifically appointed for the mission is the contact point for all questions related to gender issues.

Where not already in place, national measures, such as action plans for the implementation of UN Security Council Resolution 1325, should be prepared and implemented by all EU member states contributing to peace missions.

5. Investigation of Accusations against Mission Personnel

While the adoption of the "Generic Standards of Behaviour" and the "Guidelines on the Protection of Civilians" are certainly a real step forward, both providing a normative framework for reference, they must now be implemented. Although in theory they state that monitoring and reporting of alleged violations of human rights and the investigation of each complaint and prosecution of the person concerned by the competent authority should be ensured,³³⁰ and that in the interest of transparency, member states, third States and the EU institutions should also report on disciplinary actions taken, as appropriate,³³¹ in fact publicly accessible information on numbers and types of individual cases is not available.

The European Convention for the Protection of Human Rights and Fundamental Freedoms grants in Art. 1 the rights and freedoms enshrined in the Convention to all persons within the jurisdiction of their High Contracting Parties. This situation may apply to EU missions. In this case the local population even has the right to an effective remedy in case of violations of their rights. In any case, the local population must be informed of official contact points in case of any alleged violation of the rights by the mission personnel.

Recommendation: The EU should work for detailed regulations for dealing with allegations of violations by EU mission personnel – valid for all sending states – to be drafted at the Council of the EU. A mission needs to ensure the establishment and public announcement of a contact point for the local population in case of a complaint against mission personnel. Accusations of violations of international humanitarian law or human rights provisions by EU armed forces, EU police units or civilian EU mission personnel must be answered by thorough and independent investigations by the sending country and, if applicable, criminal prosecution. The EU should be informed of the outcome of these investigations.

³³⁰ See CEU 14805/03.

³³¹ See CEU 10773/03.

6. Evaluation of EU Missions

Internal evaluation of ESDP missions is justifiably hardly accessible to the public. The same is true for "lessons learnt" reports written for each mission, albeit in an informal process. According to the former Personal Representative for Human Rights this *modus operandi* has been chosen to ensure a frank and honest and thus useful and effective evaluation in order to better plan future missions.³³²

However, with the gender audit of the EU missions in Bosnia-Herzegovina the European Council has taken the innovative step of commissioning an external evaluation on the human rights impact of a mission. While parliamentary control of ESDP missions certainly needs to be strengthened, expert analysis on the part of academic institutions and civil society is highly desirable as well. To ensure accountability and transparency of ESDP missions, evaluations will have to be initiated and mission reports made publicly available. UN mission reports (admittedly of varying quality) appear regularly on UN mission websites. The human rights aspects of some UN missions have been evaluated – often in cooperation between mission staff, academic institutions, competent NGOs and UN headquarters staff. Reports of evaluation seminars of UN human rights components constitute an extremely valuable tool for learning and a basis for conclusions for future missions.³³³

Recommendation: The EU should evaluate EU missions with respect to their human rights impact so as to enable all those involved to draw on lessons learnt for future operations. In addition, the degree to which the human rights mainstreaming approach and objectives have been integrated into all policies and activities of each peace support operation should be taken into account. External end-of-mission evaluations should be commissioned, examining in particular the human rights impact of the missions on the local population. Results should not only be made available to the European Parliament but also to the interested public for broader discussion.

EU mission websites should publish updates on the work of the missions.

7. Training

Human rights training for ESDP is, all in all, at an early stage. This is true for all main training institutions: the European Security and Defence College (ESDC), the European Police College (CEPOL) and the EC Project on Training for Civilian Aspects of Crisis Management. At present, some individual member states do integrate human rights elements into their training for military and civil mission staff, with differing priorities. Human rights play a marginal role, though, in the orientation and high level courses of the ESDC.

While the Council Secretariat does play a role in ESDP training concepts, it is in the first place up to individual member states to set new priorities within ESDP training and thus to promote a stronger human rights agenda for ESDC and other EU training for ESDP missions. Discussions on the integration of human rights on different levels should be taken forward by member states who want to see an ESDP that does justice to EU human rights obligations and commitments. With the "Generic Standards of Behaviour" and the "Guidelines for the Protection of Civilians" the EU has prepared two very important basic documents that now need to be appropriately integrated in training practice. Training should also deepen awareness of gender-sensitive relations with the civilian population and deepen knowledge on anti-discrimination measures.

In any case, coherence, co-ordination and consistent standards among all training actors is an absolute necessity since quality differences in the training of personnel can have a negative effect on the quality of missions.

Recommendation: EU member states in cooperation with the EU council should work for human rights elements to be integrated in the orientation and the high-level courses run by the European Security and Defence College and ensure human rights training for mission staff in the preparation for every mission. Central training components in this respect are basic knowledge of international and regional human rights protection, practical fact-finding, monitoring and reporting of human rights violations, and the application of standards

³³² Interview with Michael Matthiessen, 17 November 2006.

³³³ See e. g. Henkin (ed., 1998) and follow up publications of the Aspen Institute.

of behaviour within the mission and towards the civilian population. Training should also deepen awareness of gender-sensitive relations with the civilian population and teach knowledge relating to anti-discrimination measures.

Lessons learnt should be included in the training.

8. Civil Society

According to Hadewych Hazelzet,³³⁴ NGOs have been actively involved in promoting human rights aspects in ESDP operations – they were operational for developments such as the shaping of guidelines on children and armed conflict and human rights defenders. And they have, for example, played an invaluable role in the disarmament, demobilisation and rehabilitation programmes in DRC in cooperation with operation *Artemis*. However, the authors of the study on gender mainstreaming in ESDP Missions came to the conclusion that at least in Bosnia and Herzegovina the EU only seemed to work with government officials and politicians during its missions, not with local grass-root organisations.³³⁵

The EU has identified this lack of systematic co-operation as a weakness and developed recommendations for enhanced cooperation with NGOs and civil society with the purpose of enhancing the operational efficiency of the ESDP.³³⁶ Recommendations range from regular informal exchanges between NGOs and Council bodies such as the PSC and CIVCOM, the use of NGO expertise for fact-finding or planning missions and NGO liaison in mission, through to exchanges of views on lessons learnt. An invitation to NGOs for cooperation with the mission would be extremely valuable to ensure sustainability of any mission since local NGOs play a key role with respect to human rights once the operation reaches its closing stage and leaves the host country.

Recommendation: The EU should ensure proper consultation and regular dialogue with international, national and local human rights NGOs during the entire time of a mission from the planning phase to the lessons learnt processes. This may even require the integration of a civil society expert into the mission. NGOs should be invited to take part in the capacity-building activities of missions. Human rights information from reliable local and national NGOs should be evaluated and actively drawn on by peace missions.

³³⁴ See Hazelzet (2006), 572.

³³⁵ See Batt/Valenius (2006), 12–13.

³³⁶ Council of the European Union, 15574/06, Recommendations for Enhancing Co-operation with Non-Governmental Organisations (NGOs) and Civil Society Organisations (CSOs) in the Framework of EU Civilian Crisis Management and Conflict Prevention. Brussels, 20 November 2006 (CEU 15574/06).

List of Acronyms

ASEAN	Association of Southeast Asian Nations	EUOC	European Union Operation Commander
BiH	Bosnia and Herzegovina	EUSR	European Union Special Representative
CD	Council Declaration	FARDC	Forces Armées de la Republic Democratic du Congo
CEPOL	European Police College	FYROM	Former Yugoslav Republic of Macedonia
CEU	Council of the European Union	GAM	Free Aceh Movement
CFSP	Common Foreign and Security Policy	GAERC	General Affairs and External Relations Council
CIVCOM	Committee on the Civilian Aspects of Crisis Management	HoM	Head of Mission
CIVPOL	Civilian Police	HR/SG	High Representative/Secretary-General
CJA	Council Joint Action	HSD	Human Security Doctrine
COHOM	Council Working Group on Human Rights	ICCPR	International Covenant on Civil and Political Rights
COREPER	Committee of Permanent Representatives	ICD	Inter Congolese Dialogue
COSA	The Commission on Security Arrangements	ICESCR	International Covenant on Economic, Social and Cultural Rights
DDR	Disarmament, Demobilisation and Reintegration	ICG	International Crisis Group
DRC	Democratic Republic of Congo	ICRC	International Committee of the Red Cross
EC	European Commission	ICTY	International Criminal Tribunal for the former Yugoslavia
ECHR	European Convention on Human Rights	IPTF	International Police Task Force
ECP	European Commission Project on Training Civilian Aspects of Crisis Management	IPU	Integrated Police Unit
EIDHR	European Initiative for Democracy and Human Rights	IHL	International Humanitarian Law
EP	European Parliament	IPU	Integrated Police Unit
EPC	European Political Co-operation	Mol	Ministry of the Interior
ESDC	European Security and Defence College	MONUC	United Nations Mission in the Democratic Republic of Congo
ESDP	European Security and Defence Policy	MoU	Memorandum of Understanding
ESS	European Security Strategy	NATO	North Atlantic Treaty Organisation
EU	European Union	NGO	Non-Governmental Organisation
EUCJ	European Court of Justice	OCom	Operation Commander
EUMC	European Union Military Committee	OHCHR	Office of the High Commissioner for Human Rights
EUMS	European Union Military Staff		



OPlan	Operation Plan
OSCE	Organisation for Security and Co-operation in Europe
PCP	Palestinian Civil Police
PMG	Politico-Military Group
PSC	Political and Security Committee
ROE	Rules of Engagement
RRF	Rapid Reaction Force
RRM	Rapid Reaction Mechanism
SEA	Sexual Exploitation and Abuse
SHAPE	Supreme Headquarters Allied Powers Europe
SIPA	State Investigation and Protection Agency
SITCEN	Situation Centre
SOFA	Status of Forces Agreement
SR	Special Representative
SSR	Security Sector Reform
TEU	Treaty on European Union
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNICEF	The United Nations Children's Fund
UNSC	UN Security Council
WEU	Western European Union

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